



BA

U.S. Department of Justice

Immigration and Naturalization Service

Deleting data deleted to prevent clearly unwarranted invasion of personal privacy

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



File: EAC 01 095 55190

Office: Vermont Service Center

Date: AUG 16 2002

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:

SELF-REPRESENTED

Public Copy

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, 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 she has sustained national or international acclaim at the very top level.

This petition, filed on February 3, 2001, seeks to classify the petitioner as an alien with extraordinary ability as an actress/opera performer. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1997, but the wealth of the documentation submitted relates to the petitioner's activities in her native China. Given the length of time between the petitioner's arrival in the United States and her filing of the petition, the petitioner must demonstrate that she

has earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a performer outside of China.

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 that, she 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 petitioner offers no first-hand evidence of her receipt of a nationally recognized prize or award. Instead, the petitioner submits a "Certificate of Actress Experience" from the Jinzhou City Opera Group stating that she "played as main actress" in two operas "which gained [the] China National Award in Art and Performance" in 1995 and 1996. The record contains no other information about these awards or the competition. The significance and importance of the awards are not self-evident. Furthermore, section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The petitioner must provide evidence to establish that the awards enjoy significant national or international stature. The record contains no documentation from the awarding entities or from independent witnesses to establish the importance of the awards or the entities presenting them. Simply receiving an award with the word "national" in the title does not satisfy this very restrictive criterion. Finally, we note that while the Jinzhou Opera Group may indeed have received these awards, the petitioner offers nothing from the awarding entity confirming her individual receipt of the above awards.

The Jinzhou City Opera Group also credits the petitioner with receiving the "Liaoning Province's Award in Art and Performance" in 1993 and 1994. The petitioner's receipt of this award reflects local or provincial, rather than national, recognition.

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.

On appeal, the petitioner asserts that she is a member of the China Performing Artist Association. The petitioner, however, offers no first-hand evidence of her membership to support this claim. Nor does the petitioner offer evidence reflecting that the China Performing Artist Association requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in opera/acting. 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).

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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submits only three articles under this criterion. The two articles appearing in the *Liao Ning Journal* are from a local newspaper and do not reflect national media coverage. The petitioner submits an additional article appearing in the *People's Journal*, but has omitted evidence regarding the extent of the journal's circulation.

We further note that the articles submitted by the petitioner were accompanied by incomplete, uncertified translations. Without complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that she was featured because of her achievements as an extraordinary opera performer/actress. 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). Unattested summary translations of various articles cannot suffice to satisfy this criterion. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and summary translations of articles that barely even mention the petitioner cannot satisfy the criterion.

The petitioner submits no evidence to show that, since her 1997 arrival in the United States, she has attracted any media attention. The petitioner has been performing in the United States for the American Community for Research and Education, Inc., and it would be appropriate to expect her to submit published materials from major U.S. media. The petitioner has not shown that, while in the United States, she has received coverage in major U.S. news and/or entertainment publications, comparable to the coverage received by top opera celebrities/actresses in the United States. We

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the Washington Post, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county. Also, a petitioner cannot satisfy this criterion merely by purchasing an advertisement in a national publication.

further note that news coverage limited to the Chinese immigrant community in New York is not national in scope.

The evidence submitted under this criterion fails to show 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.

In an occupation where “judging” the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher, professor or editor, simply performing one’s job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, a petitioner must demonstrate that the alien’s sustained national or international acclaim resulted in her selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level. For example, judging an international film festival carries greater weight than judging a county-wide competition.

Two of the petitioner’s incomplete translations allegedly refer to her participation as a judge. The July 25, 1996 article’s partial translation states: “The following article is published by national of China main newspaper that [the petitioner] as a professional authorship of scholarly a judge of the work to discover and recommend the new talent [sic].” The October 31, 1996 article’s partial translation states: “The following article is published by State of Liao Ning main newspaper that [the petitioner] with Zheng Lian Qing and Dai Yan Chun after the examine perform of JinZhou City Opera Group, as a authorship of professional judge in opera [sic]...” Pursuant to 8 C.F.R. 103.2(b)(3), the petitioner’s unattested summary translations cannot suffice. Without complete, coherent translations, the content of the articles cannot be verified. The petitioner’s choice of wording in her incomplete summary translations appears formulated to address at least three of the regulatory criteria. However, the regulations require verifiable, documentary evidence, rather than the subjective assertions of the petitioner. The petitioner’s subjective summary translations, unsupported by any corroborative evidence, carry insufficient weight to demonstrate eligibility under this criterion. In sum, the record contains no evidence that the petitioner’s notoriety as an actress/opera star resulted in her being selected as a judge of the work of others in the field.

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

The petitioner submits evidence of her authorship of a single book entitled Popular Boasts that was published by Chuen Feng Literature and Art of Liaoning in 1995. However, the plain wording of the regulation requires authorship of scholarly articles in “professional or major trade publications or other major media.” The petitioner has not submitted documentation establishing the impact of this publication or the extent of its circulation. Thus, it has not been shown that the petitioner’s book qualifies as “major media.” In sum, the petitioner has failed to demonstrate that her published works have earned her national or international acclaim.

Beyond the above criteria, the petitioner submits evidence of her bachelor's degree from the Musical College of Shenyang. While the petitioner's education shows that she is well trained for her chosen career, a diploma from a well-known music school is no more a guarantee of sustained acclaim than a degree from, for instance, the Massachusetts Institute of Technology is a guarantee of sustained acclaim in the sciences. The petitioner obtained her degree in 1989; we cannot conclude that this degree compels the conclusion that, over twelve years later, the petitioner is a nationally acclaimed opera performer/actress.

The statute calls for "extensive documentation," a demand reflected in the regulatory criteria, which call for a variety of types of evidence. The limited evidence offered by the petitioner does not establish that the petitioner has earned national acclaim in the United States or China. The record is ambiguous regarding the petitioner's acclaim in her native China, and at best limits her acclaim to the Liaoning Province. Furthermore, there is no evidence showing that the petitioner has sustained whatever acclaim she earned in China since her 1997 arrival in the United States. The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence which the petitioner may submit, but it does not follow that every artist who has appeared on stage, or who has been named in a newspaper article, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field. 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 herself as an opera performer/actress to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.