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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



File: EAC 00 278 52573

Office: VERMONT SERVICE CENTER

Date: DEC 10 2002

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 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

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The director treated an untimely appeal as a motion, and again denied the petition. The matter 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.

The petitioner states that he seeks "immigrant classification as an alien with extraordinary ability in the field of traditional Chinese Beijing Opera performing arts, specializing in the area of Laosheng (performing as the old male character in Chinese Opera) of Yan School Beijing Opera." The petitioner asserts that he has created "a new style" of performing, and that he is "the only Yan School Beijing Opera performing artist in the United States."

We note that the petitioner arrived in the United States in December 1996, nearly four years before he filed his immigrant petition in September 2000. Given this significant span of time, any acclaim that the petitioner may have earned in China cannot be considered “sustained” without evidence that the petitioner has continued to be the focus of considerable recognition and attention following his arrival in the United States.

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 petitioner has won several awards in China. Many of these awards are provincial rather than national or international in scope, and one appears to be limited to the students at one school. Such awards cannot satisfy the regulatory requirements.

Stronger evidence consists of a certificate from “the Selecting Committee of National TV show,” which states that the petitioner “won the screen award when he competed with the young Beijing Opera performing artists in the national TV show in 1989.” The Chinese Dramatist Association presented two awards to the petitioner in 1995. One certificate states that the petitioner “won the first place award in competition of the young age group of Beijing Opera performing artists in the national TV show.” Another certificate indicates that the petitioner “won the second place award in the national competition of the old age group of Beijing Opera performing artists in the third ‘Mei Lan Fang’ Cup award.” Given that both awards are from the same year, the references to “young age group” and “old age group” do not appear to apply to the competitors. The designations may apply to the ages of the characters played by the performers, an assertion consistent with the petitioner’s statement that he specializes in portraying “the old male character.” The petitioner was 30 years old when he filed the petition and 25 when he won the “young age group” award and second place in the “old age group” competition. Subsequent evidence supports the claim that the Mei Fan Lang Cup is a national award.

The only documented award that the petitioner has received in the U.S. since his December 1996 arrival is an award “for the extraordinary expertise in the performing art,” presented by the Tung Ching Chinese Center for the Arts in November 1999. The petitioner has not shown that this award is nationally or internationally recognized. An award from a local arts organization cannot satisfy this criterion.

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 Shangdong Branch of the Chinese National Dramatist Association, which he deems “the highest Dramatist Association in China.” The petitioner is also a member of the Qingdao Drama Association. Shangdong is a province, and Qingdao is a city. The petitioner has not shown that membership admissions for either association are decided at a national rather than provincial or local level.

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 record contains reviews of performances, but such reviews appear to be routine in the performing arts, and often appear in local rather than national publications.

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

The record contains copies of articles that the petitioner wrote for a newspaper that counsel identifies as *Chinese Traditional Theater and Musical News*. The brief articles appear to be for popular consumption, rather than scholarly pieces. The record does not show that the articles appeared in major media. At least one of these untranslated articles appears to be a review.

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

The petitioner submits photographs of performances which, he states, took place in Asia during the first half of the 1990s. The petitioner also submits performance programs documenting his appearances with the Qingdao City Beijing Opera Troupe, including tours to other cities in China. The petitioner identifies the characters he played in the performances but does not specify whether these constituted leading or critical roles. Some of these materials refer to the petitioner as a “No. 2 national performing artist.” They also indicate that the troupe in Qingdao had “21 No. 2 national performing artists,” indicating that “No. 2” is a group classification rather than an indication that the petitioner was considered the second-ranking performer in China. Various witnesses involved with the Qingdao troupe state that the petitioner is a talented and accomplished performer, but they do not indicate that the petitioner has played leading or critical roles (as opposed to lesser supporting roles) in his performances with the troupe.

Pertaining to U.S. performance, the petitioner submits documentation of his performances at such venues as the New York Chinese Cultural Center and various high school auditoriums in New York, and an auditorium at the University of the District of Columbia.

Beyond the regulatory criteria, the petitioner submits several witness letters with his petition. Various witnesses in China, who have worked with or employed the petitioner or the petitioner’s father (described as a well-known opera performer in his own right), state that the petitioner is an

“excellent” and award-winning artist. These witnesses discuss the petitioner’s reputation in China prior to his 1996 departure from that country.

The remaining witnesses are based in the United States. Fulton Song, president of the Red Apple Cultural Exchange Center, states that the center “has [a] strong commitment to employ [the petitioner’s] talent as a Chinese Traditional opera Laosheng role in and other cultural presentations we produce” [sic]. ██████ states that the petitioner “is well known in China and in the Chinese artistic communities in the United States as being one of China’s greatest active performers of Yan School Beijing Opera.”

The petitioner submits a letter attributed to Rachel Cooper, identified as “Associate Director for Performing Arts [sic] and Public Programs” of the Asia Society. We note that the letter is written not on original letterhead stationery, but on a color photocopy thereof. The letter indicates that the petitioner “is a highly respected actor in Chinese opera. He has been widely acclaimed around the world for his great artistry.”

Agnes P. Ho, executive director of Tung Ching Chinese Center for the Arts, states that the petitioner “is the most accomplished reputed artist in China and in the world,” and that she “will consider an offer to him for a position as a first rank artist of Beijing Opera and teacher” contingent on the approval of the petition. ██████ states “██████ is widely recognized as a major producer of Chinese performing arts events both in New York and throughout the country, and “has been instrumental in the rise of Chinese Cultural arts in this country since its inception.” The record contains no documentation, however, to establish that ██████ opinion of the significance of her organization is shared by performing arts experts throughout the United States.

Other Chinese witnesses in the United States praise the petitioner’s talent but do not indicate that he has become a nationally-known figure in the United States. Professor Martin Halpern of Brandeis University states only that he “was very impressed” with the petitioner’s performance, which Prof. Halpern had watched on videotape; he does not indicate even that he was aware of the petitioner’s work before watching the tape.

The letters, overall, reflect minimal recognition in the United States, and most of that recognition is concentrated in the New York metropolitan area.

The director notified the petitioner that the evidence submitted with the petition was insufficient to establish eligibility. The director instructed the petitioner to submit evidence to establish the significance of the petitioner’s awards, published materials from major media about the petitioner, “letters from international experts of Chinese opera,” and other materials.

In response, counsel states that the petitioner “was invited as the leading performer of Shanghai Beijing Opera Troupe to visit different countries and regions.” The initial submission said nothing about the petitioner’s involvement with the Shanghai troupe (as opposed to the Qingdao troupe), let alone his being a “leading performer” therein. Counsel states that the petitioner “combined the Beijing Opera performing and Male Character Martial Role with a Colored

(Painted) Face together in a new style,” but here again nothing in the original submission (including several witness letters) even mentioned this innovation, let alone commented on its significance.

In newly-submitted letters, various cultural officials of Shangdong Province (identified only by title rather than by name) refer to the petitioner as “famous” and as a leading performer in the Qingdao Beijing Opera Troupe. These provincial letters do not establish first-hand that the petitioner’s reputation extends beyond the province.

An unnamed official of the Chinese Beijing Opera Association states that the petitioner “has great achievements in his performs [sic].” The translation of this letter, and other letters, contains such poor grammar that, at times, the unnamed author’s intended meaning is difficult to discern. The letter states that the petitioner became a member of the Chinese Beijing Opera Association “[b]ecause of his outstanding of arts [sic].”

The petitioner submits an anonymous evaluation from the China Voice Chinese Opera Association of North America, which states that the petitioner has won “the highest honor of China Opera,” i.e. a prize at the Mei Lan Fang Cup Competition, and that the Tung Ching Chinese Center for the Arts (the only U.S. entity to bestow a prize upon the petitioner) commands the “high attention” of the federal government.

Ren Dechuan of the Qingdao Beijing Opera Troupe states that the petitioner performed in the lead role in a performance of *The King of Zhao*, and that the petitioner won “the highest [award] in Beijing Opera Competition in China.” The petitioner submits several letters from various opera performers in China, most of them involved with the Qingdao troupe. These performers offer high praise for the petitioner. We note that, to establish their own reputations, the performers offer evidence showing that they have won a number of awards, honors, and titles that the petitioner himself does not claim.

Counsel contends that the petitioner has satisfied an additional criterion, not previously claimed:

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

Documentation from the Qingdao Beijing Opera Troupe, states that the petitioner was a “second level performer” whose compensation was roughly double that of “other leading roles (including the first level and the second level).” An unsigned certificate from the troupe indicates that, to become a first level performer, one must have 30 years of experience and train five students who win national prizes.

The petitioner submits copies of certificates and other evidence concerning awards and performances dating from after the petition’s September 2000 filing date. This evidence indicates that the petitioner has continued to perform at high schools, community colleges and local cultural centers in greater New York. Promotional materials for these performances identify some performers but not the petitioner, suggesting that the petitioner did not play a

leading or critical role in those performances. If the petitioner is indeed a nationally-known opera performer, it is not clear why his name would not be prominently featured on such promotional materials. A program from a performance contains a section headed "Meet The Principal Performers," with capsule biographies of six performers but not the petitioner.

The petitioner submits articles from Chinese-language publications, announcing then-upcoming television performances including the petitioner, as well as awards that the petitioner has won. These articles mention the petitioner alongside other performers, but offer little information about him except for his name and that of the troupe that employed him. There is one publication that contains biographical profiles of each of the 24 winners of the Mei Lan Fang prize in 1995, and the petitioner is among these individuals.

The director denied the petition, noting that while the petitioner has established some success in the New York area, the record does not show continued wider acclaim. The petitioner filed an untimely appeal, which the director treated as a motion pursuant to 8 C.F.R. 103.3(a)(2)(v)(B)(2). In that filing, counsel states that the petitioner has submitted a "certification from Chinese Opera Association certified [sic] that the very high requirements of the achievements of the performing art to be a member of the association." The translated certificate in question states that the petitioner became a member "[b]ecause of his outstanding of arts." Even if we assume the missing noun to be "achievements" or a synonym thereof, it is not clear what achievements the association regards as the minimum requirements for admission. The petitioner has submitted no documentation from the association to set forth those requirements, which presumably have been formalized in writing.

The petitioner's filing included additional letters. Professor Martin Halpern expands upon his earlier letter, stating that the petitioner "was introduced to me . . . as one of the most talented Beijing Opera performing artists." Prof. Halpern, who in his first letter admitted that he is "not in any way an authority on Chinese opera," essentially states that he has been told that the petitioner is a prominent performer.

Roger T. Yeu, senior lecturer in Chinese at Columbia University, states "I am convinced that [the petitioner] is the best Yan School Beijing Opera performing artist that I have even [sic] seen in the United States." We contrast this assertion with the petitioner's own initial claim to be "the only Yan School Beijing Opera performing artist in the United States." [REDACTED] does not attest that the petitioner has earned any national reputation, and his own knowledge of the petitioner's background derives not from the petitioner's overall renown, but from reviewing the documents in the record.

Other letters refer primarily to the petitioner's past reputation in China. With regard to the petitioner's work in the U.S., Counsel states that the petitioner has performed in "the United States at all kinds of occasions and places." The record documents very few performances outside of greater New York, and many of the venues have been high schools and local colleges. The materials submitted with regard to the petitioner's work in the United States are not consistent with sustained national acclaim as one of the top entertainers in his field. The general tenor of the materials regarding the petitioner's work in the United States indicates that whatever

acclaim the petitioner may have earned up until 1996 in China did not follow him to the United States, nor did he re-establish such acclaim in the four years between his arrival and the filing of the petition.

The director reopened the petition and again denied it, stating that the petitioner has not overcome the initially stated grounds for denial. On appeal from this latest decision, counsel maintains that the petitioner is one of the top artists of his kind “in China and in the world,” and that by merging elements of existing genres of Chinese opera, the petitioner has created his own style which “is a great contribution to the development of the Yan school.” The record does not indicate that the petitioner’s new style is widely performed throughout China, or that his style has made greater inroads with the general U.S. population than older forms of Chinese opera.

Counsel cites previously submitted letters and documentation as evidence of the petitioner’s sustained acclaim. We have already considered this evidence, above. The petitioner’s reputation appears to have been most firmly established in Shangdong Province, although there is some evidence of recognition elsewhere in China, including at least one recognized national award. We reiterate, however, that whatever acclaim the petitioner may have earned in a country where Beijing Opera is an established and revered art form, such acclaim does not appear to have survived the transition to the United States where there appears to be a much smaller audience for that art form. Judging from the publicity materials for the petitioner’s U.S. performances, a substantial amount of which is printed in Chinese, much of that audience appears to be within the Chinese immigrant community in New York, with minimal penetration outside of that group. The petitioner has produced no persuasive evidence of acclaim that dates from after 1996, and given this lapse of four years as of the filing date, we cannot conclude that any past acclaim has been sustained as the statute and regulations demand.

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 consistently distinguished himself as a Beijing Opera singer 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 is not persuasive that the petitioner’s achievements have continuously 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.