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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 00 187 54019 Office: Vermont Service Center Date: 25 FEB 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:
[Redacted]

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 sustained and the petition will be approved.

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 the classification.

On appeal, the petitioner submits new witness letters and other documentation to clarify previously submitted 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). The relevant criteria will be discussed below. It

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

The petitioner seeks classification as an alien with extraordinary ability as an opera director. One witness, [REDACTED] provides an overview of the petitioner's work:

[The petitioner] presently is the Senior Director of the Shanghai Wai¹ Opera Group. . . .

[The petitioner] had received numerous awards in her directing career. She had directed many major classics for cultural exchange purposes and national opera performance contests. . . .

[The petitioner] is also involved with various government agencies in promoting and improving the Chinese Opera and had received great reviews and awards for her work.

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 sought to address 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 submits various award certificates, all from Shanghai-based entities. The director concluded that these awards were local in nature, but the petitioner has responded on appeal with a number of independent attestations (many from outside of Shanghai) as to the national character of the awards. We find, therefore, that the petitioner has satisfied 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 Shanghai Opera Association (different translations provide variations of this name). While based in Shanghai, the association has an international membership

¹The record contains several variant spellings of "Wai," including "Wa" and "Huai."

base and thus is not strictly local. The association's membership regulations require "distinguished merits as a performer" (with the term "performer" being broadly defined to include directors, writers, etc.) and state that "[a]ny famous performer or special contributor in Hong Kong, Taiwan, [REDACTED] and overseas may apply for membership." On appeal, the petitioner submits a letter from Ma Ke of the association, who asserts that the association "requires its members to have won national awards, and to enjoy a reputation in the nation, and to be recommended by several renowned artists."

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 applied for inclusion in the Chinese and Foreign Celebrities Dictionary. A March 1999 letter from the editorial committee informed the petitioner that she would be included in the forthcoming volume and that she could purchase a copy of the book as well as an accompanying certificate. As the director noted, the record contains insufficient evidence regarding this volume to allow a conclusion that it satisfies the criterion.

Performances directed by the petitioner are listed in the Shanghai Opera Digest. The excerpts translated in the record do not mention the petitioner herself and therefore the book does not contain published material about the alien as the regulation requires. Counsel asserts that the petitioner has submitted qualifying published material. Counsel cites that "the Opera Digest" satisfies this criterion and notes that it shows that top Chinese government officials have attended performances by the Shanghai Wai Opera. One of these photographs is from 1964, when the petitioner was a 17-year-old student, years away from becoming an opera director. Counsel offers no explanation as to how this photograph could reasonably be considered to be published material about the petitioner. There is no evidence that the petitioner directed any of the performances attended by the dignitaries shown in the photographs.

The petitioner has not shown that her name appears anywhere in the Digest and therefore an individual who had never heard of her before reading the book would still not be aware of her after reading it; it cannot contribute in any discernible way to the petitioner's acclaim. Counsel asserts that "the Opera Digest" is a national publication, "published by the Cultural Department of China." The record shows, however, that the full title is Shanghai Opera Digest and that the book was published by "the Cultural Department of Shanghai City."

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.

During the 1990s, the petitioner acted as a judge at several cultural festivals and opera contests. All of these events were organized by entities in Shanghai, such as the [REDACTED]

[REDACTED] the Shanghai Silver Tai Entertainment Company and Shanghai TV. The director concluded that these events appear to be provincial rather than national in character. On appeal, counsel simply repeats the list of events that the petitioner has judged rather than rebutting or even addressing this finding.

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

Counsel asserts that filmed and videotaped performances directed by the petitioner amount to artistic displays. This criterion, however, appears to be intended for visual arts such as painting and sculpture rather than the performing arts. It is fundamental to the performing arts that an audience watches or listens to the performance, either live or through some recording or broadcast medium. By this standard, every performance, recorded or otherwise, is a "display." There exists a separate criterion, pertaining to commercial success in the performing arts, which is more directly applicable to the petitioner's field, but the petitioner has not claimed to have satisfied that criterion.

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

The petitioner has directed productions for the Shanghai Wai Opera, and thus has demonstrably had a leading role for the institution. The record contains various indications of the company's distinguished reputation, such as aforementioned visits by top officials of the Chinese government.

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

Translations of documents in the record state that the petitioner received between [REDACTED] and [REDACTED] per production for several shows staged in Shanghai. Another document indicates that the petitioner's salary as director of the Shanghai Wai Opera "is [REDACTED] per month (average salary is [REDACTED]" Some of the original Chinese documents show the numerical figures but none show the "\$" symbol for U.S. dollars. Given that the documents were

prepared in China in the Chinese language with respect to the petitioner's work in China, it appears that the figures may refer to Chinese yuan rather than U.S. dollars. Whether the figures are in dollars or yuan, an above-average salary is not necessarily among the top salaries in the field. Evidence submitted on appeal concerns the salaries of "civil servants" which has no explained bearing on the petitioner's compensation.

While the evidence of record is not without gaps and unsubstantiated claims, the petitioner has supported enough of her claims to meet the regulatory threshold for the visa classification she seeks. The director's denial relied largely on the finding that the petitioner's reputation is restricted to Shanghai. Some of the evidence does support such a finding, but the petitioner has submitted sufficient clarification on appeal to establish that she is a highly-regarded opera director whose evident national acclaim in China qualifies her for the visa classification she seeks.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that she has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of expertise. The petitioner, having identified a prospective employer, has established that she seeks to continue working in the same field in the United States. Therefore, 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 and the petition is approved.