U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: WAC-99-257-52145 Office: California Service Center Date: JAN 03 2002

IN RE: Petitioner:
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 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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.

The director concluded that since the petitioner only had a one year contract with Kang Li Dramatic Art & Media Center, Inc., he could not establish that he sought to continue to work in his field. This classification does not require a permanent job offer and we find that this conclusion by the director was in error. It remains, however, to determine whether the petitioner has established that he is an alien of extraordinary ability.

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a Chinese Opera performer. 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 claims to have won four national awards, two in youth competitions. Awards in youth competitions cannot establish that the petitioner is one of the very few at the top of his field as he did not compete against experienced experts in the field for those competitions. The remaining two awards, the Most Outstanding Actors Prize during the China National Folk Art Festival in October 1997 and the White Orchid Cup prize at the 1996 National Beijing Opera Contest are poorly documented. The petitioner submitted what is alleged to be the award certificates with accompanying uncertified translations. 8 C.F.R. 103.2(b)(3) provides:

> *Translations*. 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.

As the petitioner has not provided certified translations as required by regulation, he has not met his burden. This failure to submit certified translations is problematic throughout the petition and will be noted further below.

Regardless, on July 27, 2000, the director requested evidence of the significance of the awards. In response, the petitioner submitted an alleged letter from the Judging Committee of the China National Folk Art Festival which, according to the uncertified translation, states:

> The China National Folk Art Festival is a grand folk art festival organized in China twice a year. The festival invites outstanding artists from China's neighboring counties such as Japan, Korea, Mongolia, Thailand, Indonesia, Singapore, Vietnam and Cambodia, etc. to show the excellent folk arts of various counties. During the festival, the Judging committee composed of experts will carefully compare and review the programs presented at the festival and vote for the outstanding actors and actresses. Such an award is regarded as an international prize.

On appeal, the director concluded that the record contained insufficient information on the criteria for the awards, the expertise and profiles of the judges, or the caliber and level of skills of the contestants. On appeal, counsel simply quotes the letter quoted above.

In addition to the lack of a certified translation of the letter allegedly from the judging committee, the opinion of the judging committee has only limited evidentiary weight. The petitioner provides no evidence from independent sources regarding the significance of the folk festival. Significantly, on appeal, the petitioner does not provide evidence to address the director's concern that the record contains no information regarding the pool of contestants other than that they come from several countries.

The petitioner has submitted no evidence regarding the significance of the White Orchid Cup Award.

> *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 submitted what is alleged to be his membership identification for the China Dramatists Association. As with all the translations in the record, the translation of the identification is not certified.

In response to the director's request for additional documentation, the petitioner submitted what is allegedly a letter from the China Dramatists Association which provides the following membership requirements :

> 1. must have at least five years of experience in drama, including playwright, direction, performance, choreography, and management;
> 2. must have made outstanding contribution to his/her own type of drama including one time international, or one time national or three times provincial awards; *or*
> *3. must have established himself/herself in his/her own type of drama* including publication of academic papers on national newspapers or journals regarding his/her own type of drama; and
> 4. must have five members' recommendations and
> 5. must be reviewed by the board of the association.

(Emphasis added.) Once again, this translation is not certified. The director concluded that the association did not require outstanding achievements. On appeal, counsel seriously mischaracterizes the requirements for the association, stating, "the minimum requirement for membership includes five years of experience in drama arts, receipt of an international, national or three provincial awards, *outstanding achievement in one's own art including publication on national journal of professional paper, or* recommended by five senior members." (Emphasis added.) Whereas the uncertified translation indicates that requirement two *or* three must be met, counsel merges two and three into one requirement which must be met.

The requirements as stated in the uncertified translation are not sufficiently clear. Obviously, the second requirement suggests that the association requires outstanding achievements, but a member need only demonstrate requirement two *or* three. The third requirement is ambiguous; it is not

clear as to whether publication is an example of establishment or whether publication itself is a requirement. If a member merely needs to establish himself in his field, which might, as an example, include the publication of academic papers, then it does not appear that the association requires outstanding achievements. To establish oneself in one's profession reflects competence only, and is not an outstanding achievement. It is acknowledged, however, that the publication of academic papers is not inherent to the field of entertainment. If a member *must* publish an academic paper as evidence that he has "established" himself, then it appears that the association is at least somewhat exclusive.

> *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 submitted five published articles and reviews of his performances. He submits partial, uncertified translations of these articles. The director requested evidence of the circulation of the publications in which the articles and reviews were published. In response, counsel stated:

1. **Las Vegas Chinese News** on February 20, 1999. **[Exhibit 7]** It is local Chinese news [sic] printed in Las Vegas. . . .
2. **Drama and Movies Newspaper** on April 21, 1998 **[Exhibit 8]** This is a professional newspaper for entertainment. . . .
3. Drama Weekly 3rd Volume, 1996 **[Exhibit 9]**. This is a professional journal for dramas. . . .
4. Art Review in 1994. **[Exhibit 10]** This is a professional journal for artists of various forms. . . .
5. China Actors Newspaper on November 2, 1996. **[Exhibit 11]** This is a national professional newspaper for performing artists. . . .

(Summaries of the articles and reviews were omitted from the above quote.) The director concluded that the publications were all local. On appeal, counsel argues that only the *Las Vegas Chinese News* is a local publication. The record, however, contains no independent evidence of the circulation of these journals or papers. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's assertions are especially suspect in light of his mischaracterization of the China Dramatists Association's membership requirements as discussed above.

The petitioner also submitted an alleged photocopy of a magazine with his photo on the cover. The document is clearly a color photocopy of an original photo of the petitioner onto which the English title and the date have been pasted. The Chinese letters appear to have been glued or painted on the original photo as the white shading is smudged and large drops of glue or paint appear around the first letter. Such an amateur layout suggests that the magazine is not a major media publication.

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

The petitioner submitted a three-paragraph "article" authored by the petitioner noting common plot elements between a Beijing Opera and a Russian novel, and concluding that Eastern and Western expressions of emotion are similar. This comment, published in the "Talk on Beijing Opera" section of the *Chinese Beijing Opera* cannot be considered a scholarly article. The petitioner has not established that it has any more significance than a letter to the editor. The petitioner also fails to establish the significance of the publication which carried the "article."

Finally, the record includes a recommendation letter from Guo Hancheng of the Chinese Association of Dramatists who provides general praise of the petitioner's technique and concludes that he is one of the best Chinese opera performers with above average talent. This letter does not specifically address any of the above criteria and the opinion of one expert in the field does not relieve the petitioner from meeting at least three of the regulatory criteria.

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 distinguished himself as an artist 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 as a Chinese Opera performer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.