B2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying 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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JUL 16 2002

IN RE: Petitioner: [redacted]
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:

[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, Nebraska Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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.

On appeal, counsel asserted that the initial evidence was sufficient to establish the petitioner's eligibility and submitted programs for shows in which the petitioner appeared.

On December 11, 2001, the Administrative Appeals Office (AAO) on behalf of the Associate Commissioner, affirmed the director's decision, concluding that the evidence did not establish the significance of the petitioner's awards, the published articles submitted, the competition in which he competed, or the reputation of the organization in which he appeared to perform a leading role.

On motion, the petitioner submits evidence relating to these concerns. This evidence will be discussed below.

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 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) 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 record reflects that the petitioner won several Chinese awards for dance between 1986 and 1993. In its decision, the AAO stated that counsel's attestations regarding the prestigious nature of these awards was not supported by the record. The AAO noted that 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). The AAO further noted that at least some of the awards appear to be local, not national. On motion, the petitioner submits evidence regarding the "Taoli" or Peach Cup competition. The material reflects that the top students from dance academies around China compete at the Peach Cup. This information reveals that the competition is limited to dance students. As the petitioner did not compete against experienced experts at the top of his field for his first place award in this competition, it is not evidence of his national acclaim as one of the very few at the top of his field.

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.

As stated by the AAO, the petitioner is a member of the China National Dance Artists Association and was a performer with the China Shanghai Song and Dance Troupe. The AAO concluded that the petitioner had failed to submit any official documentation regarding the membership requirements for the China National Dance Artists Association or the China Shanghai Song and Dance Troupe. On motion, the petitioner submits evidence regarding the reputation of the China Shanghai Song and Dance Troupe. Counsel does not, however, address the AAO's other stated concern, namely that successfully auditioning for a performing troupe, even a competitive group, is not an outstanding achievement. The troupe's reputation will be discussed below as it relates to the leading or critical role criterion.

The petitioner also submitted reference letters in support of this criterion, which counsel discussed as evidence of outstanding achievements as judged by national or international experts. The AAO stated that this criterion cannot be divided into a membership part and an achievement part to be met independently. Specifically, a petitioner must establish that he is a member of an association and that *the association* requires outstanding achievements of its members. Whether experts have recognized the petitioner's achievements is simply irrelevant to this criterion if the association of which the petitioner is a member does not require outstanding achievements. Counsel does not address this issue on motion.

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 AAO concluded that the articles in Chinese language newspapers allegedly about the petitioner's work and himself could not meet this criterion because the petitioner failed to submit complete translations as required by this criterion and 8 C.F.R. 103.2(b)(3). Furthermore, the AAO stated that while counsel asserted that several of the articles were published in major newspapers, the petitioner did not provide any evidence of the circulation of these papers. On motion, the petitioner submits evidence regarding the circulation of the *People's Daily*. While the petitioner has now established that the articles were published in major media, the petitioner did not respond to the AAO's concern regarding the lack of certified translations. Without complete certified translations of the articles, we are unable to evaluate the content of the articles. As such, the petitioner has still not met this criterion.

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.

The AAO concluded that the letter appointing him as judge to "Peach Cup" Dance Contest was insufficient to meet this criterion because the petitioner failed to submit any evidence supporting counsel's assertion that this is a prestigious contest. The AAO further concluded that while the beauty pageant which the petitioner judged may include some dancing, judging a beauty pageant is simply not judging the work of others in the field of dancing. On motion, the petitioner submits evidence regarding the Peach Cup as stated above. While this is a student competition, it is a prestigious national competition in which the top dance students from the best academies compete. As such, judging this competition could serve to meet this criterion. While not mentioned by the AAO, however, it is noted that the letter of appointment is not accompanied by a certified translation as required by 8 C.F.R. 103.2(b)(3).

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

The AAO stated that "it appears" that the petitioner played a leading or critical role for the China Shanghai Folk Song and Dance Troupe but concluded that the petitioner had not submitted any evidence to establish that the troupe has a distinguished reputation. On motion, as stated above, the

petitioner has now submitted evidence regarding the distinguished reputation of this troupe. The evidence, however, a page from a Hong Kong website promoting an upcoming visit by a subgroup of the troupe, raises concerns regarding the petitioner's role within the troupe as a whole. The promotion suggests that the troupe has more than one traveling subgroups, all of which perform separately and indicates that the troupe includes other dancers who have won awards similar to those won by the petitioner. Moreover, the artistic director of the subgroup visiting Hong Kong is a National Class One Performer. The record does not reflect that the petitioner holds this rank. Given that the troupe contains different subgroups, each of which include artistic directors and several dancers performing "lead" roles in at least one dance, the record no longer suggests that the petitioner played a leading or critical role for the troupe as a whole above and beyond the other talented dancers and the artistic directors in the group.

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 still 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 dancer, 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of December 11, 2001 is affirmed. The petition is denied.