

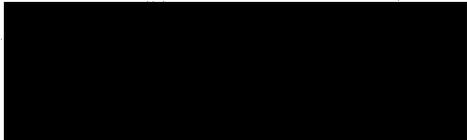


BA

U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: WAC 01 098 51783 Office: California Service Center

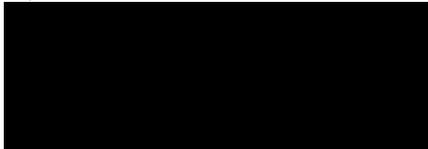
Date: JUL 18 2002

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

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 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 for that visa classification.

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).

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.

Counsel states:

Petitioner is an accordion performer, educator and conductor of international renown. He has received numerous awards in China and abroad for his achievements as a performer and teacher of accordion music. As a result of his tireless efforts to compose new accordion music, standardize the accordion performance rank levels in China, and promote increased international cooperation in accordion music theory research and performance technique, [the petitioner] has become a respected authority. In his field of accordion music performance, [the petitioner] is indeed one of the small percentage of people who have risen to the top.

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 in fact met three of the necessary criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Certificates in the record indicate that the petitioner won First Prize in the 1987 National Accordion Invitational Competition, sponsored by the China Accordion Society; First Place in the 1987 Sichuan Province Xinxin Cup Accordion Competition (Youth Instructors Category), sponsored by the Sichuan Province Musicians' Association Accordion Professionals Committee; Commemorative Prize at the China Chengdu Meishi International Accordion Competition at the Sichuan Conservatory of Music; and First Prize at the 1992 National Accordion Music Composition Competition, sponsored by the China Accordion Society.

At least one of these awards appears to be a provincial rather than national or international award, but others appear to be national in character. Counsel observes that the petitioner's students have also won awards. Some of the related claims are supported only by letters from the students and photographs of the students holding trophies, but the petitioner has also submitted actual documentation of some of these awards. The petitioner's students have won second place at the Accordion Championships of the New Zealand Accordion Association; first and third place at the China Chengdu Meishi International Accordion Competition; and first prize and golden cup at the Accordion, Piano and Organ Competition in Argenteuil, France.

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 submits documentation of his membership in several associations, including the American Accordionists' Association. Counsel asserts that these organizations "require extraordinary achievement as a prerequisite for membership," but the petitioner does not submit any evidence from those associations to corroborate this claim. Without documentation of the associations' membership requirements, the petitioner cannot satisfy this criterion.

The petitioner has subsequently submitted an information sheet from the American Accordionists' Association. This document identifies the association as "an organization of accordion enthusiasts: professionals, teachers, students and hobbyists." The document makes no reference to requiring "extraordinary achievement" as counsel has claimed, and the assertion that the organization accepts "students and hobbyists" indicates that it accepts accordionists of all levels of ability.

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 was the subject of an article in *the field of music* [sic], which counsel describes as "a professional publication issued by the Sichuan Musicians' Association. It is published at the provincial level, and is circulated widely . . . throughout China and overseas." The petitioner submits no evidence to show that this "provincial level" publication circulates in significant quantities outside of Sichuan Province. It is not clear that the misspelling of the magazine's title on its own cover is consistent with the level of quality generally encountered with major national or international media. We note that the magazine article indicates that the petitioner is "a national second-ranked performer." This wording suggests that there is a "first rank" higher than the "second rank" that the petitioner occupies. The term "a national second-ranked performer" (emphasis added) suggests that the second rank is a class of performers, rather than that the petitioner is the second highest ranking individual accordion player in China.

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 record shows that the petitioner has served as a jury member at competitions in France and Russia as well as in his native China. The petitioner's international activity as a judge appears to satisfy this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel asserts that the petitioner's prizewinning composition "Women Soldiers' Drill" amounts to a contribution of major significance, as does his tutelage of prizewinning accordionists as described earlier in this decision. This assertion is questionable. Because a separate criterion exists for the alien's receipt of prizes, we cannot conclude that a given activity is a major contribution simply because it resulted in the alien winning a prize. By counsel's logic, every alien who has won a national or international prize automatically also satisfies the criterion pertaining to major contributions, thus undermining the regulatory requirement for a broad variety of evidence.

Counsel also cites a number of witness letters submitted with the petition. Professor [REDACTED] of the Shanghai Institute of Music states:

[The petitioner] and I have jointly planned, organized and arranged the first exchange meeting for Chinese accordion schools, the first competition for accordion professionals, the first international accordion competition in China, and the first rank examination for the accordion in China.

Most of the remaining witnesses repeat the above information in varying degrees of detail. The record also contains letters from witnesses in France and Russia. The petitioner's principal, most visible impact in the accordion field appears to have been as an organizer of events and associations rather than as a performer or composer in his own right. On appeal, the petitioner submits material from Accordions Worldwide (www.accordions.com) indicating that, despite the relatively recent introduction of the accordion into China, "there are now far more accordionists in China than in any other country, and possibly all other countries combined." This material confirms that [REDACTED] has been president of the Chinese Accordion Society since its founding in 1990. While this documentation does not mention the petitioner, it does establish international recognition of the significance of many of the events and activities that the petitioner helped to initiate. [REDACTED] statements tie the petitioner to these developments. The petitioner's absence from the Accordions Worldwide publication, published outside of China, does not diminish his claim of national acclaim within China. We note that this same documentation indicates that the Chinese Accordion Society has roughly 7,000 members, not 300,000 as counsel has implied.

The record also indicates that the petitioner has devised a new means of playing the accordion to provide a richer sound. The record also indicates that a number of accordionists subsequently used this new technique to win several national accordion competitions. The petitioner's contributions to accordion organizations and competitions in China satisfy this criterion.

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

Counsel states "[s]ince 1990, Petitioner has helped edit nine volumes of the Sichuan Province, Chengdu Joint Accordion Examination Teaching Materials. Over 400,000 volumes of this text have been sold in China and overseas." Counsel cites no evidence to support this claim. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Likewise, counsel does not cite any evidence to support the assertion that the petitioner has written a "comprehensive text on accordion music performance and training" that "is to be published within the next year." Even with such proof, the as-yet-unpublished manuscript has not appeared in any publication and therefore cannot satisfy the plain wording of the criterion. An alien enhances his reputation through the dissemination and influence of his or her published work; acclaim does not attach to the act of writing scholarly material prior to publication.

The petitioner submits a translated excerpt from what appears to be an accordion tutorial book. The editor of the book states "I received especially valuable, enthusiastic help from" the petitioner and four other named individuals. There is no indication that the petitioner actually wrote anything in this book, or that the book represents a scholarly publication.

The petitioner wrote an article in *Chengdu Music and Dance*, which the petitioner has not shown to be scholarly. The title of the untranslated one-page article is stated as "Reflections on Experience Conducting Amateur Choirs." Because a choir is a vocal group, it is not clear that this article relates to the accordion at all.

The petitioner wrote several music theory articles in *Explorations in Music*, identified as a "Quarterly of the Sichuan Institute of Music," and in *Art of Music*, published by the Shanghai Conservatory. These articles represent the petitioner's strongest claim of scholarly publications, but the petitioner has not established the national circulation of either of these publications. For the above reasons, we cannot find that the evidence is sufficient to establish that the petitioner has satisfied this criterion.

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

Counsel asserts that the petitioner's "work has been frequently showcased – as a soloist performing with Chinese orchestras, as a conductor of Chinese orchestras, and as a solo performer at concerts in China and overseas." By this standard, every musician who has ever performed in front of an audience has "showcased" his or her work. More significant for concert performances is the commercial success of such performances, covered by a separate criterion:

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Although this is the only criterion to specifically single out the performing arts, it is one of only two criteria that counsel does not claim the petitioner has satisfied. If the petitioner claims that he is among China's most acclaimed musical performers, he bears the burden of showing that this is the case despite any evidence of demand for his live or recorded performances. As we have noted above, the petitioner's greatest impact appears to have been as an organizer and promoter of accordion music, rather than as a performer in his own right.

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

Counsel states that the petitioner has "served as a leader in organizations dedicated to accordion music performance, instruction and evaluation. He has worked to standardize the quality of accordion music instruction and evaluation throughout China, and has successfully promoted and popularized the study of accordion music." Counsel makes numerous assertions that are either

unsubstantiated or contradicted by the record of proceeding. For instance, counsel states "[b]ecause of Petitioner's persistent effort in the Society, China became the 24th member of the International Accordion Union which is a subsidiary of the United Nations Educational, Scientific and Cultural Organization (UNESCO)." Counsel cites "exhibit 2" to support this claim. Exhibit 2 is a translated document, entitled "How China became a member of International Accordion Union," prepared by the China Accordion Association. The document identifies several individuals "who made contributions to this great event," but the petitioner's name is not to be found there. Elsewhere, counsel states that the petitioner "was appointed Deputy Director of the Sichuan Musicians' Society." The accompanying certificate, however, indicates that the petitioner held the lesser position of "Deputy Director of the Sichuan Province Musicians' Association Accordion Professionals Organizational Committee." The petitioner was thus deputy director of one particular committee, rather than of the entire association as counsel has claimed. Counsel also asserts that the petitioner "was elected Assistant to the Director of the China Accordion Society." The certificate in the record states that the petitioner was "appointed Assistant to the Director of the China Musicians' Association Accordion Society." The petitioner has not shown that the "assistant director" and the "assistant to the director" are one and the same.

We concur with counsel's assertion that the director misinterpreted or failed to lend due weight to some of the evidence submitted. As we have noted, however, there are serious discrepancies and omissions in counsel's representations, and we stress that the approval of this petition rests on the strength of key evidence rather than on counsel's assertions regarding that evidence, or regarding other materials to which counsel refers but which are absent from the record. The petitioner has not submitted the strongest possible claim, but the material that he has submitted appears to be sufficient to meet the threshold requirements and establish eligibility for the visa classification sought. The petitioner has won national prizes, judged at national and international competitions, and (according to top officials) made significant contributions to accordion organizations and competitions in China. The credibility issues arising from other claims in the record do not appear to extend to the third-party documentation upon which the approval of the petition rests. The petitioner has established eligibility for the benefits sought under section 203(b)(1)(A) 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.