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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 01 019 52537

Office: Vermont Service Center

Date: 18 JUN 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, Vermont 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

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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 she has sustained national or international acclaim at the very top level.

The petitioner describes her field of endeavor as "traditional Chinese Beijing Opera performing arts, specializing in the area of Female High Born and Young Croquette Character." The petitioner states "less than three people can truly apply themselves successfully to play the role in

¹ Both the petitioner and several witnesses refer to the petitioner playing a "croquette" character. It appears that they mean to say "coquette," meaning a flirtatious woman; a croquette is a dish consisting of meat or vegetables that have been minced, breaded and fried.

the world.”. 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, she 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 received two Awards for Extraordinary Expertise in the Performing Arts from [REDACTED]. The petitioner has not established that these awards are nationally or internationally recognized, rather than purely local awards in the New York area. Similarly, the petitioner's Chinese awards presented by local or provincial authorities (such as the Tianjin City Cultural Bureau) have not been shown to be national in nature.

A translated certificate in the record states that the petitioner “won the excellent performing award in the competition of the middle and young age group of Beijing Opera performing artists in the national TV show in 1993,” attested by “The Center TV Station.” The record contains no other information about the award or the competition.

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 Chinese Dramatists Society, the Tianjin Dramatists Society, and the Chinese Employee's Technology Committee. The petitioner also notes a “Qualified Certificate of Tianjin City Professional Technology Job,” but it is not clear how this certificate is an indication of membership in an association. The record contains nothing from any of the associations to establish that they require outstanding achievements of their members, as judged by recognized national or international experts.

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 submits articles from several New York-based newspapers, mostly dated late May, 2000. The petitioner submits no evidence to show that, since her 1998 arrival in the United States, she has attracted any media attention outside of local New York papers published in Chinese. As an entertainer working in the United States, it is entirely appropriate to hold the petitioner to U.S. standards when considering media coverage. The petitioner has not shown that, while in the United States, she has received coverage in major U.S. news and/or entertainment publications,

comparable to the coverage received by top opera celebrities in the United States. News coverage limited to the Chinese immigrant community in the United States is not national in scope.

All of the petitioner's media coverage in China has been in Tianjin-based papers, mostly the *Tianjin Daily News*. The burden is on the petitioner to establish that this paper represents major national media, as opposed to a local newspaper. Local news coverage cannot directly result in national acclaim.

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

The petitioner submits documentation (such as playbills and photographs) of several of her operatic performances. While this evidence shows that the performances took place, it does not establish commercial success. It cannot suffice for the petitioner simply to demonstrate that she has performed before audiences; such performances are inherent to her art form, and we cannot conclude that the majority of Beijing opera performers have not performed in front of audiences. To satisfy this criterion, the petitioner must establish that her performances have consistently drawn larger audiences and/or higher box office grosses than most others in her field, at a national or international (rather than local or provincial) level.

Beyond the above criteria, the petitioner submits several witness letters. Several of the witnesses are officials of Chinese arts organizations based in New York. The letters from these individuals do not directly establish that the petitioner has, in the United States, earned significant acclaim outside of the Chinese immigrant community in New York City.

Other witnesses, in China, appear to differ as to the extent of the petitioner's recognition, sometimes restricting the petitioner's reputation to particular parts of China, sometimes merely describing the roles the petitioner has played and offering subjective assessments as to the petitioner's skill as a performer.

Some of the letters do little more than describe the other evidence in the record. Witnesses assert that the petitioner is a very famous opera performer, but letters alone cannot establish such recognition. The statute calls for "extensive documentation," a demand reflected in the regulatory criteria, which call for a variety of types of evidence. If the petitioner fails to submit direct evidence of sustained acclaim, she cannot overcome this deficiency by demonstrating that witnesses whom she has selected consider her to be famous.

The director instructed the petitioner to submit additional evidence regarding the petitioner's performances and earnings from 1999 through the early part of 2001. The petitioner had been in the United States since June 1998. Therefore, to demonstrate sustained acclaim in the arts since that time, the petitioner must establish that she was among the most successful and acclaimed performers in the United States subsequent to her entry. In response, the petitioner has submitted evidence that she earned \$12,055 in 1999, \$18,130 in 2000, and nearly \$16,000 between January and July 2001. The petitioner has also submitted documentation of several performances in and

around New York City during that time. Media coverage of these performances, documented in the petitioner's submission, has been limited to local Chinese-language newspapers. The petitioner has also submitted additional witness letters from Chinese individuals residing in the New York area. None of this evidence establishes that the petitioner has earned or sustained any kind of significant acclaim, reputation, or recognition outside of New York's Chinese community. However highly or well the petitioner may be regarded within that community, such limited recognition does not and cannot amount to national acclaim in the United States.

The director denied the petition, stating that the petitioner has not established sustained national or international acclaim as a Beijing opera performer. On appeal, the petitioner submits arguments from counsel and documentation of the petitioner's recent performances.

Counsel asserts that the petitioner graduated from top opera schools in China. While the petitioner's education shows that she is well trained for her chosen career, a diploma from a well-known opera school is no more a guarantee of sustained acclaim than a degree from, for instance, the Massachusetts Institute of Technology is a guarantee of sustained acclaim in the sciences. The petitioner obtained her degree in 1966; we cannot conclude that this degree compels the conclusion that, over 35 years later, the petitioner is nationally acclaimed as a Beijing opera performer. Similarly, the director has not disputed the petitioner's continued activity as a performer, but we cannot ignore that many of the petitioner's recent performances have been at churches, restaurants, and other venues that are not generally associated with the nation's top performing artists.

Counsel asserts "[e]ach school of [redacted] as its masters and its own system of training and plays the specific role [redacted] and that the petitioner "is the only top [redacted] performing artist in the United States promoting the [redacted] performing arts in the communities." Regardless of the exact structure of [redacted] and regardless of the number of Xun School performers in the United States, the statute and regulations specifically demand evidence of sustained national or international acclaim. Because the petitioner has been actively performing in the United States for several years, it is entirely appropriate to judge the petitioner by U.S. standards when evaluating her acclaim. Recognition among one particular enclave in one city is not national acclaim by any reasonable standard.

The petitioner submits evidence showing that Chinese performing artists who are in the United States under P-3 nonimmigrant visas (as the petitioner is) tend to earn between \$10,000 and \$17,000 per year, and that the petitioner's earnings tend toward the high end of this range. P-3 nonimmigrant Beijing opera, however, is not a distinct field of endeavor. If the petitioner intends to satisfy the regulatory criterion pertaining to "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field," the petitioner must establish that she is among the highest paid Beijing opera singers in the United States, not merely that she is among the highest paid P-3 nonimmigrant Beijing opera singers in the United States.

For the reasons discussed above, the record is ambiguous regarding the petitioner's acclaim in her native China, and it contains no evidence that the petitioner has sustained whatever acclaim she earned in China since her 1998 arrival in the United States. The petitioner's recognition in the United States appears to be limited almost entirely to the Chinese community in the greater New York area. Such acclaim is local rather than national or international, and we reject the contention that the petitioner, by earning \$17,000 a year performing in churches and restaurants, has climbed to the very top among the nation's performing artists. Even if the petitioner were to prove unequivocally that she is more successful than any other [REDACTED] opera performer in the United States, she cannot qualify for the classification sought if her success has not reached the level of sustained national acclaim. The fact that [REDACTED] appears to have relatively little recognition in the United States outside of the Chinese community does not compel the Service to disregard the non-Chinese majority of U.S. residents when considering the extent of the petitioner's acclaim in the United States.

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 herself as an opera performer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.