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]

19 JUN 2002

File: WAC-01-009-52453 Office: California Service Center Date:

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, 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.

On appeal, counsel argues that the director's conclusions are not supported by law or the facts. Regarding the director's interpretation of the law, counsel argues that the director incorrectly concluded that non-English foreign media cannot be considered major media.

We agree with counsel that the director's conclusion that Chinese language publications distributed in China can never be considered major media since the majority of the population in the United States cannot comprehend them is not supported by the law. The statute does not require national acclaim in the United States. As the director also concluded that the petitioner did not establish national acclaim in addition to international acclaim, however, we do not find the director's error to be reversible. For the reasons discussed below, we concur with the director's overall conclusion. We will discuss counsel's remaining arguments 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 she 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 music teacher, the proposed employment in the United States. While the director raised the issue of whether the petitioner's claimed acclaim as a singer was sufficiently related to her proposed employment as a music teacher in his request for additional documentation, the director did not raise this issue in his final decision. In response to the director's request for additional documentation, counsel argues that the distinction is not material since most Nobel laureates are professors despite the fact that the awards were not issued for teaching. Science professors, however, must generally continue their research. Their contribution to science is not limited to educating students. Regardless, as will be discussed below, the petitioner has also failed to demonstrate extraordinary ability as a singer.

While the director did not address the above issue specifically in his final decision, he did conclude that the record did not establish that the petitioner would substantially benefit prospectively the United States. Counsel does not address this conclusion on appeal. The petitioner indicates that she seeks to teach music in the United States and submits a job offer from Beauty Light Artistic Kindergarten. As the original employment letter is in Chinese, this appears to be a Chinese language kindergarten. The petitioner has not explained how teaching music in a Chinese language kindergarten (or any kindergarten) will *substantially* benefit prospectively the United States.

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 was awarded the title of "Shenyang City Excellent Musician," and "Excellent Performer" in the Song Contest held in 1995 in memory of the 50th Anniversary of the Victory in Anti-Japanese War and the liberation in Dalian City. The petitioner also received an "award" for excellence in the First Shenyang Artistic Festival in 1984. In June 1994 the Harbin New Evening Paper awarded the petitioner the title "50 Singing Stars from Harbin." Finally, in 1993, the petitioner was awarded a "certificate of honor" for her great success in her performance in the Spring Festival TV Party named "Beauty of Northeast" jointly sponsored by three television stations from three Northeastern provinces in 1993.

On March 26, 2001, the director requested additional documentation regarding the significance of the above "awards." Tan Zhaobang, Chair of the Music Association of Shenyang City, asserts that

the association held a popular vote, selecting ten musicians for the title, "Outstanding Musician." While Mr. Zhaobang asserts that one of the criteria for selection was local and national recognition, it does not appear that the petitioner competed with musicians outside Shenyang City for this award. Regardless of the size of Shenyang City, an award for which national experts did not compete cannot be considered evidence of national acclaim as one of the very few at the top of one's field.

Ding Ming, former Principal of the Shenyang Music Conservatory, asserts that seven art groups of the city attended the First Shenyang International Art Festival and that the festival also invited international guests and nationally famous artists to perform. Mr. Ming further states that local officials judged the competitors. Mr. Ming does not make clear whether the nationally famous artists competed, or just performed.

Mr. Ming also discusses the petitioner's well-received performance in Japan at the "Flower and Green's Exhibition" and the "Forest of Arts." The record does not reflect that the petitioner won any awards for these performances.

Mr. Ming further asserts that of the more than fifty musicians who performed on the television program, "Beauty of the Northeast," the petitioner was one of three to receive an award. He asserts that the television show was broadcast repeatedly on national and local stations.

Mr. Ming also asserts that the "50 Famous Singers in Harbin" were selected from more than 1,000 musicians born or working in Harbin. Finally, Mr. Ming asserts that more than ten thousand performers participated in the 50th Annual Celebration of the War of Resistance Against Japan and Dalian's Liberation. He asserts that the petitioner received the "individual outstanding performance award," during the televised event.

The director concluded that all of the above contests were regional. On appeal, counsel asserts that the correct translation for the "Beauty of the Northeast" television show is actually, "Beautiful is the Northeast." He notes that it was jointly sponsored by the three provincial television stations in Northeast China and included participants from Liaoning Province, Jilin Province, and Heilongjiang Province. Counsel asserts that the population in these three provinces is over 100,000,000, larger than many countries. While we acknowledge that China is a large country, its size does not alter the fact that the competition was not national, but regional.

Counsel further asserts on appeal that Dalian City tribute was televised nationally and notes that the petitioner is not from Dalian but was awarded the "Prize of Excellent Performer." While the Dalian tribute may have been televised nationally, the record is absent evidence as to the significance of the award itself. For example, the Country Music Awards are not only televised nationally in the United States, the ceremony and the awardees receive national press coverage. The petitioner submitted no evidence of national newspaper coverage of the award or other evidence that the award itself is nationally recognized by the Chinese public.

Counsel also notes that Mr. Ming confirmed that international guests and nationally famous artists performed at the First Shenyang Art Festival Fair in 1994. As stated above, while these artists may have performed, Mr. Ming does not make it clear whether they competed for the petitioner's award. Regardless, as with the above awards, the record contains no evidence of national press coverage of the prizes awarded at the festival. As such, the petitioner has not established that the awards themselves are nationally recognized as significant.

Finally, all of the above translations are uncertified. 8 C.F.R. 103.2(b)(3) requires certified translations of all foreign language documentation. The uncertified translations provided by the petitioner have limited evidentiary value. As will be discussed below, the petitioner's failure to submit certified translations is not limited to 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 submitted her membership card for the Chinese Musicians Association, which she joined in 1985. Liu Yali, General Secretary and Standing Vice-Chairman for the Liaoning Musicians Association asserts that the requirements for the Chinese Musicians Association are as follows:

1. One must have a higher attainments in musical art on provincial or national level and have made outstanding contributions to musical art.
2. One must have made outstanding achievements in major international or domestic musical events.
3. One must be a graduate from music collage [sic] and has been engaged in music for 15 years or more.
4. One must hold the Title position, music deputy professor, national second class performer or above.
5. One must have written articles or published music books, which must bear a great instructions and influences over the music circle.
6. One must love the work in the association and pay the member fee on time.

The petitioner did not initially provide information regarding the membership requirements from the Chinese Musicians Association itself. In response to the director's request for additional documentation, the petitioner submitted the official criteria for admission into the Chinese Musicians Association. Counsel alleges that the petitioner was admitted in the performing arts category which has the following membership requirements, of which a prospective member must meet only one:

1. Those who became finalists in major international musical performing art competitions;

2. Those who won First, Second or Third Prize in major national competitions sponsored by this association or related ministries or commissions in central government;
3. Those who have won the First Prize in the major specialized competitions sponsored by musicians associations on the levels of the province, autonomous regions, or the cities directly under the jurisdiction of the central government or by entities directly controlled by provincial or higher authorities;
4. Those who solo concerts, recitals have been organized by provincial musicians associations or by entities directly controlled by provincial or higher authorities and have been highly praised;
5. Those who have acted as a conductor in specialized musical group on provincial or above levels for 5 years, or those who have conducted more than three large-size musical pieces, and have created certain influence;
6. Those who have worked in specialized group on group on provincial or above levels, acting as a solo, a recital, a key role in opera, or mare than 5 years experience as a chief, or a vocal director;
7. Those who hold professional title as second-class performing artists;
8. Those typical folk artists, who have highly accomplished, have tremendous influence and have been recognized by the public. (Not limited by his/her education.)

The petitioner also submitted what is alleged to be evidence of her membership in the Shenyang Musicians Association, but the uncertified translation is ambiguous. Regardless, the petitioner did not submit evidence of the requirements to join the Shenyang Musicians Association.

The director concluded that the petitioner met this criterion. We cannot concur. While some of the criteria for membership are impressive, they appear to be in descending order of difficulty. More specifically, the first criterion is international competition, while the final criterion is merely being an accomplished folk artist recognized by the public. As a singer can become a member merely by being a second-class performing artist or a recognized folk artist, it does not appear that the association requires outstanding accomplishments of its members. Finally, as discussed above, the translations of the above documents are not certified as required by 8 C.F.R. 103.2(b)(3).

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.

Initially, the petitioner submitted several newspaper clippings to meet this criterion. Some of these clippings consist only of a photograph, such as the petitioner's picture which appeared in the *Shenyang Daily* in 1996 and a picture of the petitioner which appeared in *Opera Review* on an unknown date. Appearing unidentified in a photograph which is published in a newspaper with no accompanying article primarily about the petitioner is not evidence of national acclaim. Half of the remaining eight translated articles were written by the petitioner herself and published in the *Guangming Daily* in 1964, *Opera Review* in 1986, and two unidentified publications. Of the final

four articles, three are published in local Harbin newspapers, the *New Evening Paper*, and the *Harbin Daily*. The last article appeared in an unspecified publication.

The remaining articles are not translated and the petitioner did not provide the date and source of the article. As such, they do not comply with the regulatory requirements for this criterion.

The director concluded that none of these publications are major media since they are published in China in the Chinese language. On appeal, counsel argues:

> [The petitioner's] achievements were made in China. Chinese language is being used by 1.2 billion people. Petitioner will not object to this reason if the press release in Chinese language was made in Los Angeles where English is the major media language. The fact is, however, that all the press release submitted in this petition was made in China and the Chinese language is the major media language there.

We concur with counsel that the director erred in his conclusion regarding this criterion. A petitioner need only demonstrate national, not international acclaim. Moreover, a petitioner need not demonstrate any acclaim in the United States unless the petitioner resides in the United States. In the instant petition, the petitioner resides in China. Thus, that the publications are incomprehensible to most Americans is entirely irrelevant.

Nevertheless, the petitioner must demonstrate that the publications are major national publications in China. In response to the director's request for documentation, the petitioner submitted a letter from the Editor of the *Shenyang Daily* who asserts that Shenyang is the fourth largest city in China and that the newspaper has a circulation of 500,000, providing necessary information to the people of Shenyang. The Editor does not state, however, that the paper has a circulation nationally. Regardless, as stated above, the petitioner's photograph without an accompanying article is not evidence of national acclaim. The petitioner also submitted a letter from a reporter for the New Evening News asserting, according to the translation, that the *Harbin Daily News* has a circulation of "15 hundred thousand," and that the *New Evening News* has a circulation of "30 hundred thousand." While the uncertified translations suggest that the Harbin newspapers have a larger circulation than the Shenyang newspaper, a review of the original Chinese text reveals that the Arabic numeral "50" in the first translation is followed by the same two Chinese characters as the "15" and the "30" in the second translation, yet the 50 is translated as 500,000 while the 15 and 30 appear to be translated as 1,500,000 and 3,000,000. Regardless, as with the letter from the Editor of the *Shenyang Daily*, the letter from the reporter at the *New Evening News* does not reflect that the Harbin newspapers have a national circulation. The record contains no evidence regarding the circulation of the *Guangming Daily*.

Finally, as discussed above, the translations of the above articles and the letters regarding the significance of the publications are not certified as required by 8 C.F.R. 103.2(b)(3).

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 petitioner submitted a letter of appointment from the Liaoning Cultural Bureau inviting the petitioner to judge the 1996 Provincial Song Contest. In response to the director's request for evidence regarding the significance of the contest and the selection criteria for the judges, counsel refers to the letter from Ding Ming, former Principal of the Shenyang Music Conservatory. Mr. Ming states:

> [The] Culture Department of Liaoning Province and Liaoning Province Musicians Association held a vocal music contest in May 1996 to select candidates to participate [in] the Vocal Music Competition to be held by Central TV station. The Cultural Department invited reputable singers and vocal music professors in Liaoning Province to form a judging committee for this selection contest. [The petitioner] was an outstanding musician, a famous singer, and a national first class actress. She was invited as one of the seven judges for this contest.

The director concluded that the record only indicated that the petitioner was invited to serve as a judge and lacked evidence that she actually did serve as a judge. On appeal, counsel argues that the invitation itself is evidence of national acclaim. Moreover, counsel argues that confirmations are rarely issued after the competition is completed. Finally, counsel notes that the petitioner submitted a declaration on appeal confirming that she did serve as a judge. Regardless of counsel's opinion that the invitation itself is sufficient evidence, the regulations state "evidence of the alien's *participation*" as a judge. Thus, it is relevant whether or not the petitioner served as a judge. While counsel argues that confirmation of judging services is not routinely provided, evidence of judging for significant competitions is usually available in the form of programs, news coverage, or letters from the organizers. The petitioner's self-serving statement that she served as a judge is insufficient. Moreover, Mr. Ming indicates that the judges were selected from reputable singers and music professors in Liaoning Province. Thus, it is not clear that selection as a judge for this competition is evidence of national acclaim. Moreover, the petitioner once again failed to comply with 8 C.F.R. 103.2(b)(3) and submitted uncertified translations of the above documents.

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 her article "How Do I Instruct Pop Song Singers" published in *Music Life* in 1995 and her article "Sing With One's Own Style" published in *Music Score* in 1995.

In response to the director's request for additional documentation, the petitioner also submitted letters regarding *Music Life Magazine* and *Music Language*. The letters assert that the publications are "popular" and have had "great influence," although neither letter provides the circulation numbers of the publications. Moreover, it is not clear that *Music Language* is the same publication as *Music Score*.

Once again, we concur with counsel that the director erred in rejecting these articles on the basis of their publication in China in Chinese.

Nevertheless, as stated above, the petitioner has not established the significance of these publications. Moreover, the brief articles, according to their translations, are not scholarly articles discussing, for example, music theory or music education techniques. The translation of the petitioner's summary at the end of her first article provides:

> In summing up, experiences as follows:
>
> 1. Create a correct learning view.
> 2. Control breathing correctly -- the motive of vocal music.
> 3. Training in pronouncing the words.
> 4. Training in expanding the range.
> 5. Song treatment and performance.

According to the translation, the body of the article contains little if any development of these ideas. These five elements of music education, without elaboration, do not appear to be particularly noteworthy or groundbreaking. As with the other criteria, the evidence submitted in support of this criterion did not include certified translations of the foreign language documents.

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

The petitioner submitted a "Letter of Appointment" from the Shenyang Musicians Association inviting the petitioner to serve as an "advisor" for the association. The record is absent evidence regarding the nature of an "advisor" position or the reputation of the Shenyang Musicians Association.

The petitioner also submitted a certificate issued by the Human Recourses Department of Liaoning Province certifying the petitioner as a "first class performer." The record does not contain the requirements for this status. Nor does it appear to be a position with a specific organization. As such, it cannot be considered evidence for this criterion.

The certification from the Liaoning Musicians Association asserts that the petitioner was a council member of the Liaoning Musicians Association and the Vice-Chairman of the Shenyang Musicians Association. The petitioner did not submit confirmation of this role from the Shenyang Musicians Association itself.

In a somewhat confusing paragraph, the director appears to conclude that the above organizations all have a distinguished reputation but that the petitioner did not sufficiently establish that she had performed a leading or critical role for these organizations.

On appeal, counsel asserts that by concluding that the petitioner is a member of an organization that requires outstanding achievements of its members, the director was inconsistent by concluding that serving as a "board member" and vice-chairman for the same organization is insufficient to meet this criterion.

As stated above, we do not agree with the director that the petitioner has established that she is a member of an organization which requires outstanding achievements of its members. Even if it were established that the Chinese Musicians Association has a distinguished reputation, the petitioner has not established that she performed a leading or critical role for that association.

The petitioner has not submitted evidence regarding the reputations of the Liaoning Musicians Association or the Shenyang Musicians Association. Moreover, as stated above, the Shenyang Musicians Association itself only confirmed that the petitioner was an "advisor" not a vice-chairman. It is not clear that an "advisor" plays a leading or critical role for the association.

Finally, as with the documentation submitted in support of the other criteria, the translations of the documents submitted in support of this criterion are not certified.

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

While a petitioner need not meet every criterion, it can be expected that a petitioner either meet a criterion designed specifically for one's field or provide an explanation for not meeting it. The record contains no evidence of the sales of the petitioner's recordings in China. While the petitioner submitted several programs, she did not submit any box office receipts. The petitioner provides no explanation for why one of the top singers in China would be unable to demonstrate any commercial success.

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 a singer 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 indicates that the petitioner shows talent as a singer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.