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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 01 015 51527

Office: Vermont Service Center

Date: MAY 02 2002

IN RE: Petitioner: [Redacted]
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:



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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 that the petitioner has not established sustained international acclaim, and therefore does not qualify for classification as an alien of extraordinary ability.

Section 203(b)(1)(A)(i) of the Act states, in pertinent part, that an alien can qualify as an alien of extraordinary ability if "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."

In denying the petition, the director acknowledged that the petitioner has won several awards, but asserted that these awards are presented only "to Chinese acrobats, and not internationally renown acrobats," and that the petitioner has not "submitted evidence of any major award that would be recognized by elite international performers." The director also acknowledged newspaper articles about the petitioner, but stated "the readership of these publications appears to be limited to . . . China." Counsel, on appeal, argues that the director disregarded the statutory and regulatory language, instead relying on subjective criteria with no support in the law.

The statute, cited above, requires evidence of "sustained national or international acclaim." By this standard (which the regulations mirror), national acclaim is sufficient to establish eligibility. The director erred in basing the decision almost entirely on the petitioner's failure to establish international acclaim, without giving due consideration to the question of whether the petitioner has earned sustained national acclaim. We take no position at this time as to whether the petitioner has met this threshold. Instead, we instruct the director to make such a determination through careful consideration of the evidence in the record of proceeding.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.