



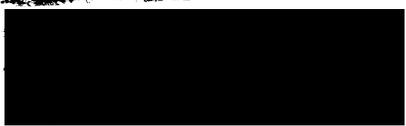
B2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted  
prevent clearly unwarranted  
invasion of personal  
privacy."/

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



16 SEP 2002

File: EAC 01 226 51449 Office: Vermont Service Center Date:

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 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...

(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, filed on May 3, 2001, seeks to classify the petitioner as an alien with extraordinary ability as an opera performer. 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 that, counsel 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.*

A translated certificate in the record states that the petitioner won “a First Place prize in [the] Peking Opera Competition performed on TV of National young performers,” attested by the “Committee of Peking Opera Competition of National Young Performers of 1994.” A second translated certificate states that the petitioner was “awarded top-grade prize in [the] national Peking Opera contest of young performers,” attested by the “People’s Republic of China National Cultural Department” (1995). In his supporting letter, Yuheng Yu, a former professor of traditional Chinese opera, briefly mentions these awards, but provides no specific information other than asserting that one of the awards was “very important” and that the petitioner appeared on television. The record contains no information about the awards or competitions from the awarding entities or the Chinese news media. In order to satisfy this criterion, the petitioner must provide sufficient evidence to establish that these awards enjoy significant national or international stature. Simply receiving an award with the word “national” in the title does not satisfy this very restrictive criterion.

We note that both of the awards were from competitions involving “young performers.” Such awards, while commendable, do not appear to reflect achievement at the highest level of traditional Chinese opera. The petitioner must show that she has earned national or international awards when competing at the highest level, not just within her own age group.

The petitioner also submits two first place awards and an award of “remarkable success” from provincial competitions in Heilongjiang. The petitioner’s receipt of these awards reflects local or regional, rather than national, recognition.

*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 a membership document from the “Heilongjiang Provincial Branch” of the China Opera Performers Association. Membership in an association that judges member performers at a provincial chapter level, however, cannot satisfy this criterion. It is clear from the regulatory language that members must be selected at the national or international, rather than the provincial, level. The petitioner offers no evidence showing that the “Heilongjiang Provincial Branch” of the China Opera Performers Association requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in traditional Chinese opera.

*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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language.

The petitioner submits a single newspaper article which counsel describes as a “U.S. review.” It is not clear how this article that was published in the United States would demonstrate national acclaim in the U.S. or China. A Chinese language newspaper published in the United States does not rise to the level of major media, for the vast majority of the U.S. population cannot comprehend the Chinese language. We further note that the article was not accompanied by an English language translation. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Without a proper translation, it cannot be determined whether the petitioner is the main subject of the article, or that she was featured because of her achievements as an extraordinary opera performer.

The petitioner also submits a two-paragraph biography about the petitioner appearing in a book entitled *Art of Traditional Chinese Opera*. The book features numerous other performers, with the petitioner’s brief mention appearing on page 96. It is not clear whether this book was published in the U.S. or China.

The petitioner offers no evidence regarding the extent of the distribution of the *Art of Traditional Chinese Opera* book or the U.S. newspaper review. Thus, it has not been shown that the publications featuring the petitioner qualify as major media. The existence of only two published pieces about the petitioner during the span of her entire opera career is hardly indicative of sustained acclaim.

On appeal, counsel indicates that “the experts’ letters” refer to the existence of Chinese press reports, but he offers no evidence to support the experts’ claims. The regulation clearly requires the submission of published materials about the alien, rather than third-party letters attesting to the existence of such published materials. In sum, the evidence submitted under this criterion fails to show that the petitioner has attracted the sustained attention of the national press or major media.

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

Counsel argues that the petitioner’s witness letters satisfy this criterion. Sun Yumin, a self-described leading actress for the Beijing Opera House, states:

When [the petitioner] was in China, she was known well for her performances in *qingyi* parts. The *qingyi* is very hard, because this kind of part means that the actress must always be looked up to. She must not be false and must be admired by the audience. This means

her voice must be pure and she must radiate the sun and the moon. When you see a *qingyi* performer, you must wish that she be your daughter or your wife.

██████████ states that he has performed in the Beijing Opera for many years. He indicates that the petitioner is a “favored performer” and adds that the petitioner was sought out “because she was one of the top in her kind of style.”

██████████ former professor at the China Traditional Opera Institute, states that the petitioner is a “high-level performer in the *qingyi* roles.” He adds: “[The petitioner] is a darling of the critics and has won many awards for her performances. She is very beautiful and long-legged, but not cheap or gaudy.” The petitioner, however, offers no evidence of any published critical reviews to support ██████████ assertion.

██████████ Vice-Chairman of the Chinese Traditional Opera Performers Association, states: “[The petitioner’s] singing techniques [are] excellent, as is her acting skill. She has much knowledge of the techniques of Chinese traditional opera of Peking, and she is able to play the *qingyi* with much believability and appreciation.” ██████████ concludes by noting that the petitioner performs for a traditional Chinese opera company located in the United States (Sino-American Arts of Flushing, New York).

None of the witness letters indicate that the petitioner’s contributions set her apart from most other leading opera performers, nor do the letters even devote much space to the petitioner’s specific activities. Several of the petitioner’s witnesses mention the petitioner’s awards, but these have already been addressed under a previous criterion. The ten criteria are intended to be separate and distinct from one another. Therefore, the petitioner’s awards cannot fulfill this second criterion without clear evidence that they were given for specific contributions of major significance.

On appeal, the petitioner submits two additional letters. ██████████ President of the Mei Lanfang Peking Opera Troupe, devotes the majority of his letter to describing his own accomplishments and those of his father. In describing the petitioner, he states the following:

In China, [the petitioner] had many choice *qingyi* roles in many opera troupes and performed all over China to much acclaim. She was on television and much awarded. Her audience thought she had risen to be a top performer of *qingyi* roles, and so did I. I think you should think so to.

██████████ a performer with the Peking Opera Troupe, states that the petitioner has “been on television, been written about, and has received much acclaim from the public.” The petitioner, however, offers minimal first-hand evidence to support this assertion. For example, the petitioner submits no evidence of theatrical reviews of her performances appearing in major Chinese newspapers or entertainment magazines.

Several of the above letters are from impressive experts whose opinions are important in the field

of traditional Chinese opera. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

While the petitioner has attracted the favorable attention of several prominent witnesses, a simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment that places her at or near the top of her field. We cannot ignore that many of the petitioner's witnesses have performed in more distinguished venues, hold greater positions of authority, and have won more significant awards for their performances. In sum, the petitioner has failed to demonstrate a contribution of major significance in her field.

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

Counsel states that photographs and a compact disc recording from one of the petitioner's performances fulfill this criterion. The wording of the criterion, however, strongly suggests that it is intended for visual artists, such as sculptors and painters, rather than for opera performers, actresses, or musicians. Opera performances and compact disc recordings are covered by the "commercial success in the performing arts" criterion, below. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

*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 photographs of her performances and a compact disc recording. 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 traditional Chinese 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. The petitioner, however, offers no evidence showing that she consistently draws large audiences or that her compact disc enjoys a high sales volume.

The record is ambiguous regarding the petitioner's acclaim in her native China, and at best limits her acclaim to the Heilongjiang Province. Furthermore, although the petitioner has lived in the United States since 1999 and performed for an opera company based in New York, she submits no evidence to demonstrate that she has sustained whatever level of acclaim she held in China since her 1999 arrival in the U.S.

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence which the petitioner may submit, but it does not follow that every performer who has appeared on stage, or succeeded in a specific character role, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

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.