

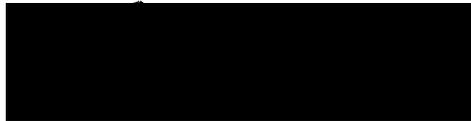


B2

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



23 SEP 2002

File: EAC 00 284 50626 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:
[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, 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 he has sustained national or international acclaim at the very top level.

This petition, filed on October 10, 2000, seeks to classify the petitioner as an alien with extraordinary ability as an actor/opera performer. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1998, but the majority of the documentation submitted relates to the petitioner's activities in his native China. Given the length of time between the petitioner's arrival in the United States and his filing of the petition, the petitioner must demonstrate that he has earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a performer outside of China.

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, he 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 the first prize in the 1987 China National Peking Opera Actors' TV Competition." The petitioner also submits a translated letter from the China Drama Artists Association (Shandong Branch) congratulating the petitioner for his receipt of the first prize. The brief congratulatory letter credits the petitioner with "mak[ing] contributions to the development of drama and arts in [the Shandong] Province," but it offers no specific details about the prize. Counsel states: "Approximately 400 young professional Peking Opera actors from all over China attended this competition [which] the China Central TV Station broadcast to all TV viewers in China." Counsel's assertion that the award was limited to "400 young professional Peking Opera actors" seems to suggest that established top actors and those not affiliated with Peking Opera were excluded from the competition. The petitioner submits a 1987 article appearing in the *People's Daily* noting the petitioner's receipt of the first prize award. However, only a two-sentence translation of the article was provided. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which 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). An incomplete translation cannot suffice to demonstrate the national significance of the award. Without a complete translation, it cannot be determined that the award reflects national recognition for excellence in acting, or that the petitioner was featured in the article because of his achievements as an extraordinary opera performer.

The petitioner also submits a Silver Award from the Singapore National Arts Association (1990). Counsel states that the petitioner won this award at the 9th Singapore International Cultural and Arts Festival. Counsel further states: "Over 2000 artists from all over the world attended this festival."

The record contains no further information describing the above awards or detailing the competitions. Counsel's assertions regarding these awards 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). We note that Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The petitioner must provide sufficient evidence to establish that the above awards enjoy

significant national or international stature. Simply receiving an award with the word "national" or "international" in the title does not satisfy this very restrictive criterion.

A second translated certificate in the record states that the petitioner "won the Ling Long Golden Cup Award in the 1987 Shandong Province Outstanding Peking Opera Actors' Competition." The petitioner also submits two Certificates of Excellence from the New York Chinese Cultural Center (1999, 2000) and a plaque of recognition from the NCBA Culture and Arts Center of Astoria, New York (1999). The petitioner's receipt of these four awards reflects local or provincial, 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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that judges membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation.

In response to the director's request for evidence, the petitioner submitted his membership card for the China Drama Association. The petitioner, however, offered no evidence reflecting that the China Drama Association requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in opera/acting.

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. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a

particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submits a total of six articles under this criterion. Three of the articles appearing in the *Xindao Daily* and *Overseas Chinese Daily* were published in June 2001. This evidence came into existence subsequent to the petition's filing. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even if we were to accept the articles as evidence, they were not accompanied by certified English language translations. Furthermore, the Chinese Folk Dancer Center, not the petitioner, appears to be the subject of these three local articles.

The 1987 article from the *People's Daily* was not accompanied by a complete translation pursuant to 8 C.F.R. 103.2(b)(3). With only two sentences translated, it cannot be determined that the petitioner is the main subject of the article, or that he was featured because of his achievements as an extraordinary opera performer/actor. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that barely even mention the petitioner cannot satisfy the criterion.

The 1983 article in the *JiNan Daily News* and the 2000 article in the *Overseas Chinese Daily* appear to be featured in local or regional, rather than national, newspapers. The burden is on the petitioner to establish that these papers represent major national media. We note that the petitioner has omitted evidence regarding the extent of the newspapers' circulation.

The petitioner submits no evidence to show that, since his 1998 arrival in the United States, he has attracted any media attention outside of local New York papers published in Chinese. As a performer 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, he 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. The evidence submitted under this criterion fails to show that the petitioner has attracted the sustained attention of the national press or major media in the U.S. or 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.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the Washington Post, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher (including graduate student teaching assistants), professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, a petitioner must demonstrate that the alien's sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level. For example, judging an international film festival carries greater weight than judging a county-wide competition.

In response to the director's request for evidence, the petitioner submitted two brief letters. The first letter, in its entirety, states: "The 4th China Peking Opera Competition will be sponsored by this ministry and will be held in Beijing on November 15th, 1997. We appoint you as judge of this competition from November 15, 1997 through November 20, 1997." The second letter, in its entirety, states: "We hereby invite you to work as a judge for the Shandong Peking Opera Competition held at 9:00 am (Tuesday) on October 16, 1997. Please report to this committee at the Provincial Cultural Department in time." The second letter reflects an invitation to a local, rather than national, competition.

The plain wording of the regulation requires "evidence of the alien's participation." While the petitioner has submitted some limited evidence reflecting two requests for him to judge opera competitions, there is no evidence from the requesting entities to confirm that he actually participated in the events. The evidence submitted by the petitioner offers no details of the petitioner's involvement and cannot satisfy the statutory demand for "extensive documentation" set forth in Section 203(b)(1)(A)(i) of the Act.

Furthermore, the regulation at 8 C.F.R. 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge of the work of others in the field must reflect sustained acclaim or the recognition of his peers. In sum, the record contains no evidence that the petitioner's notoriety as an actor/opera star resulted in his being selected as a judge.

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 his 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 he has performed before audiences; such performances are inherent to his art form, and we cannot conclude that the majority of Peking opera performers have not performed in front of audiences. To satisfy this criterion, the petitioner must establish that his performances have consistently drawn larger audiences and/or higher box office grosses than most others in his field, at a national or international (rather than local or provincial) level.

Beyond the above criteria, the petitioner submits several witness letters. Shao Hua Zheng, President of the Shandong Peking Opera, the petitioner's former opera company, offers a brief letter describing the petitioner as "a smart and diligent actor" and "very well liked by the public." The remaining witnesses are all 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 of New York.

Some of the letters do little more than describe the other evidence in the record. Witnesses assert that the petitioner is a 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, he cannot overcome this deficiency by demonstrating that witnesses whom he has selected consider him to be famous.

The director instructed the petitioner to submit additional evidence regarding his eligibility for classification as an alien of extraordinary ability. On August 22, 2001, the petitioner responded to the director's request. Much of the evidence submitted has already been addressed under the relevant criteria. At the time of his response, the petitioner had been in the United States for over three years (since June 1998). Therefore, it is entirely appropriate to judge the petitioner by U.S. standards when evaluating his acclaim. In order to demonstrate sustained acclaim in the arts, the petitioner must establish that he was among the most successful and acclaimed performers in the United States subsequent to his 1998 entry. The petitioner submitted a letter from the NCBA Culture and Arts Centers offering him a salary of approximately \$35,000 per year. The petitioner has not shown that this salary places him among top opera performers in the United States.

The petitioner also submitted documentation from his instructional workshops and performances in and around New York City during that time. Media coverage of his work as teacher, documented in the petitioner's submission, has been limited to local Chinese-language newspapers. 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. Recognition among one particular enclave in one state is not national acclaim by any reasonable standard.

For the reasons discussed above, the record is ambiguous regarding the petitioner's acclaim throughout his native China; his notoriety appears mostly limited to the Shandong Province. Furthermore, the record contains no evidence that the petitioner has sustained whatever acclaim he earned in China since his 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. This acclaim is local rather than national or international, and we reject the contention that the petitioner, by earning \$35,000 per as an actor, has climbed to the very top among the nation's performing artists. The fact that Peking opera 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 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 who has been named in a newspaper article, 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 himself as an opera performer/actor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.