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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: WAC 01 283 51938

Office: CALIFORNIA SERVICE CENTER

Date: FEB 03 2003

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: SELF-REPRESENTED

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

for Elizabeth Hayward
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 to classify the beneficiary 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 petitioner, a corporation that intends “to promote bilateral cultural and educational exchanges between broadcasting and television specialists and workers of the United States of America and the People’s Republic of China,” seeks to employ the beneficiary as its director of media production. 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 the beneficiary has sustained national or international acclaim at the very top level.

The beneficiary is identified as “a senior writer and producer of the Zhejiang Cable Television Station in Hangzhou, 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 which, the petitioner 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.

██████████ CEO and president of the petitioning company, states that the beneficiary has won numerous such awards during her 22-year career as a writer and producer at the Zhejiang Cable Television Station in Hangzhou, China. Many of the awards shown in the record are from provincial rather than national entities, and some of the national award certificates do not show the beneficiary's name. Nevertheless, the record contains copies of national award certificates, bearing the beneficiary's name, issued by the All-China Society of Broadcasting and Television. A letter from an unidentified official of the society indicates that five of the beneficiary's nationally broadcast television programs "won the Gold Award of Cable Television," with another three programs having won the "State Silver Award."

The director instructed the petitioner to submit "evidence to establish the origination, purpose, significance and scope of each award, as well as the criteria used to nominate and judge the participants and award winners." In response, the petitioner has submitted copies of previously submitted certificates, and a letter from the beneficiary, who asserts that nine of the previously claimed awards "are awards of NATIONAL EXCELLENCE." Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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.

██████████ asserts that the beneficiary, "due to outstanding achievement, has been elected to prestigious membership of the Zhejiang Provincial Association for Television Artists." The name of this association indicates that it is a provincial, rather than national or international, association. An unsigned letter in the record indicates that the beneficiary serves on the Board of Directors of the Television Documentary Academic Committee of the All-China Association for Television Artists.

The director requested evidence that would demonstrate that the associations named above are in fact either national or international, and that they require outstanding achievements of their members as judged by recognized national or international (not provincial) experts in their

disciplines or fields. In response, the petitioner has submitted a “summary translation” of the Bylaws of the All-China Television Association, which states that a prospective member “must be a recognized achiever in the research and creator of Television Documentary, or one who has won Academic Awards from this Association . . . must be recommended by two current members of our Association and approved by the President” (ellipsis in translation provided by the petitioner). Further evidence regarding this membership is submitted on appeal and will be discussed in that context.

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 an untranslated article from the *Metropolitan Flash* newspaper. The petitioner describes the article as an interview with the beneficiary, but the petitioner also states that the beneficiary is the author of the article. The petitioner fails not only to provide a translation, but also to demonstrate that *Metropolitan Flash* constitutes major media rather than a local or minor newspaper.

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.

A certificate from the Evaluation Office of the All-China Society of Broadcasting and Television states that the beneficiary “has been appointed to be the judge for the evaluation and examiner [sic] of cable television competition[s] and exhibition[s] in the eastern region of China on numerous occasions.” The certificate does not elaborate as to the nature or extent of the beneficiary’s judging activities or the significance or scope of the competitions and exhibitions mentioned. The certificate in the record states that the beneficiary has acted as a judge “on numerous occasions,” but the record does not identify any specific event at which the beneficiary served as a judge.

The beneficiary states “a Director/Producer of a Television Program is in all reality a Judge of works of others, be it playwright, actor and actress and other supporting cast. She must approve the work of others and endorse the participation in her program.” The assertion that every director/producer is a kind of “judge” is not persuasive. The purpose of the regulatory criteria at 8 C.F.R. 204.5(h)(3) is to distinguish the very top figures in a given field. Traits shared by everyone in a given field are of no use in rendering such distinctions; it is illogical to claim that every director is one of the very top directors. Therefore, the claim that the basic duties of every director/producer involve “judging” of some kind carries no weight. The petitioner has submitted evidence that suggests that there are a substantial number of prizes in China’s television industry; the judges selecting the winners of those prizes are acting in a manner consistent with the regulation. Again, the petitioner has not identified any specific instance of similar such judging in which the beneficiary has participated.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains copies of "academic treatises" authored by the beneficiary, published by the Zhejiang Provincial Bureau of Broadcasting and Television. The petitioner has not shown that these treatises were circulated nationally (rather than provincially) in major media. The beneficiary, in response to the director's request for additional evidence, has asserted "my academic works have all been published by National/Provincial/reputable major media/publishers," but this assertion represents a claim rather than evidence to support such a claim.

The director denied the petition, citing numerous shortcomings in the evidence provided by the petitioner. For instance, the director determined that "evidence was not submitted to establish [the] national or international significance" of the beneficiary's awards, and that the petitioner has not documented any actual instances of the beneficiary's work as a judge of the work of others.

On appeal, the petitioner submits new certificates and declarations as well as copies of previously submitted documents. A letter from an unidentified official of the Secretarial Office of the Department of Broadcast, Film and Television of the People's Republic of China attests that "all the awards, especially those issued by the central government agencies, awarded to [the beneficiary] are [the] highest honor that can be bestowed in the field of China's television, films and broadcasting enterprises." The above wording is somewhat peculiar, suggesting that every award the beneficiary has ever received is the "highest honor" possible in her field. Furthermore, even though every award is the "highest honor," some of those awards are "especially" so. Thus, the logic of the letter dictates that some of the beneficiary's awards are higher than others, even though all of them are the "highest." The letter provides no means of verifying the assertions therein, an especially significant omission considering the vague and inconsistent nature of those assertions.

A letter from the All-China Association of Television Artists indicates that the beneficiary has been "elected to the directorship of the Association's board of directors." This letter is dated March 7, 2002, over six months after the filing of the petition. Therefore, this document cannot confer eligibility if the beneficiary was not already eligible as of the petition's filing date. *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.

A second letter from the All-China Association of Television Artists indicates that the organization has "a total membership of more than 35,900." The petitioner has submitted nothing to establish that almost 36,000 people represent only a small percentage of television artists in China. Without such evidence, the considerable size of the association's membership does not suggest restrictive membership criteria.

The petitioner offers, on appeal, a new claim under an additional criterion:

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Xie Mingming asserts that the beneficiary “is the highest income earner in all of China within her field and amongst her peers.” To support this claim, the petitioner submits a copy of an “Investigative Report (Survey),” the translation of which purportedly indicates that the beneficiary’s “2001 annual income was a total of ¥207,980.00; that [the beneficiary’s] income is ten times more than her peers and is considered to be the top income earner in her field.” The document is attributed to an unnamed official of the “Investigation Division, All-China Research Institute for Social and Economics” [sic].

Other Chinese documents in the record use standard Arabic numerals, and therefore the figure of 207,980.00 (and the date of 2001) ought to be readily visible in the document in question. The body of the Chinese-language document appended to this translation, however, does not show any numerals except “00,” nor does it show the “¥” symbol used in the translation. Thus, the record lacks verifiable support for the very significant claim that the beneficiary is the single highest paid person in her entire field in all of China. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). We note, here, that according to materials in the record, the petitioner intends to pay the beneficiary \$60,000 per year, a respectable sum but quite low in the context of the U.S. television industry.

The record contains documents from the All-China Society of Broadcasting and Television, the All-China Association for Television Artists, and the All-China Television Association. It is not entirely clear whether these are distinct organizations that happen to share similar names, branches of a parent organization, or a single entity with variant translations of its name. In either case, the petitioner’s claim of eligibility rests almost entirely on documents furnished by anonymous representatives of one or more All-China Societies or All-China Associations in the television field. The petitioner asserts, on appeal, that these entities are part of China’s central government, but there is no documentary support for this claim.

Section 203(b)(1)(A)(i) of the Act calls for “extensive documentation” of sustained acclaim, a demand reflected in the ten regulatory criteria listed at 8 C.F.R. 204.5(h)(3). A series of vaguely worded certificates, that may all have been issued by the same entity, do not constitute “extensive documentation.” The beneficiary has purportedly won a string of the nation’s “highest honors” in television, never winning a lower-level award because “all” of her awards are the “highest,” but the record does not reflect the level of publicity and attention that would presumably accrue to such a phenomenally successful television writer, director and producer. The petitioner asserts that the beneficiary has acted as a judge on “numerous occasions” but has been either unable or unwilling to identify any specific occasion at which the beneficiary acted in such a capacity, despite the director’s mention of this omission as one of the grounds for denial. A translated

letter, supposedly showing that the beneficiary is paid a higher salary than anyone else in her field in China, contains figures that are not found in the original document from which the translation purportedly derives. In all, the record shows a systematic failure by the petitioner to provide credible, verifiable, independent evidence to support crucial, material claims made in support of the petition.

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 beneficiary petitioner has distinguished herself as a television writer, director or producer 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 beneficiary'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.