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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass., 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: WAC 01 254 57943 Office: California Service Center

Date: **NOV 18 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:



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 Citizenship and Immigration Services (CIS) 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.

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 Administrative Appeals Office 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 that she qualifies 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 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 June 19, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a musician. Specifically, the petitioner plays and teaches the zither, a musical instrument comprising a number of strings stretched over a flat sounding board. At the time of filing, the petitioner was employed as a professor at the China Music College in Beijing. 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.

The petitioner submitted a "Certificate of Honor" from the "Association of Chinese Musicians Shanghai Chapter" (1987). The certificate states that she was "awarded the First Prize for Performance in the First Contest of the Chinese Traditional Strings and Woodwind Instruments Music Performance and Creation." A letter from Yanze Wu, Acting Vice Chairman, Chinese Musicians Association, provides further information about the award, stating: "The Contest of the Chinese Traditional String and Woodwind Instruments is a team contest.... The Contest had a category of 'New Music....' [The petitioner] and her team played a new music 'Praise the South' and won the first award for new music." An award issued by the "Shanghai Chapter" of the Association of Chinese Musicians is reflective of local, rather than national, recognition. Further, the record contains no documentation singling out the petitioner's musical performance as especially important to the success of her team. While the receipt of a team award would not disqualify the petitioner from fulfilling this criterion, the burden is on her to provide documentary evidence showing that her role was central to the team's victory. The petitioner has presented no such evidence.

The petitioner also submitted a certificate from 1997 stating that she was "awarded an Excellent Supervising Teacher Award at the China Dafeng Cup Ancient Zither Invitational Tournament. It is hereby to issue this certificate as an encouragement." A letter from Cizhao Wang, President, Central Conservatory of Music in Beijing, where the petitioner studied music, states:

[The] China Music Association and State Nationalities Affairs Committee held [the] "China Da Feng Cup Chinese Zither Invitational Tournament" [where] zither instrumentalists from music schools, institutes, and performing organizations from all over the country came together to compete on stage. The sponsors also set up an Outstanding Award for Teachers whose students had won medals. During the competition, [the petitioner's student], Mao Ya won the First Place in the Youth Group, accordingly, [the petitioner] won the Outstanding Award for Teachers. This is just like an old saying in China, "Where there are strong generals, there are strong soldiers."

It is apparent from Cizhao Wang's letter that any music teacher whose student earns a medal at this tournament is automatically bestowed a teaching award.

Two witnesses having ties to the petitioner have attested in general terms to the prestige accorded to the above two awards. The available evidence, however, is not sufficient to conclude that the petitioner has won recognized national prizes in Chinese music.

In response to the director's request for evidence ("RFE"), the petitioner submitted additional evidence of teaching awards, including a second "Excellent Supervising Teacher Award" certificate from the 1999 China Children Grand Music Competition. Other than counsel's assertion that this award is national in scope, the record contains no further information or evidence pertaining to the significance of this award.

In regard to all of the teaching awards presented by the petitioner, the record does not indicate how many other teachers earned similar recognition. We further note that tutelage of “youth” winners would not carry the same evidentiary weight as tutelage of more experienced musicians or professionals.

Also submitted were a Certificate of Honor from the Chinese Association of Orchestral Music and the Grading Test Committee of Chinese Traditional Instruments (issued December 2001) and a Certificate of Award from the People’s Republic of China State Commission of Education (issued December 2001). This evidence came into existence subsequent to the petition’s filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New evidence that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Even if we were to accept this evidence, these awards appear reflective of recognition at the institutional, rather than the national, level.

The significance and importance of the awards presented under this criterion are not self-evident. It should be emphasized that the petitioner must submit documentary evidence showing the degree of recognition accorded to her awards. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide sufficient evidence to establish that her awards enjoy significant national or international stature. In this case, the petitioner has not shown that her awards enjoyed significant recognition beyond the context of the events where they were presented.

Finally, we note the absence of evidence showing that the petitioner has been individually recognized as a top zither “player.” The record contains no evidence of her individual receipt of any nationally recognized prizes or awards as a music performer. Given the number of music competitions held in China and counsel’s assertions that the zither is the “top oldest musical instrument in China” and China’s “most elegant and graceful music instrument,” it would certainly be reasonable to expect the petitioner to submit evidence of individual recognition as a competitor at the national level.

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.

We withdraw the director’s finding that the petitioner’s evidence satisfies this criterion. 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 associations that evaluate membership applications at the local chapter level would 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 is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submits evidence confirming her membership in the Association of Chinese Musicians ("ACM") and its "Criteria for Admission of New Members." A review of the specific criteria for admission does not show that outstanding achievement is an essential condition for admission to membership. For example, music creators "who hold associate senior professional titles" or "whose musical creations have been broadcast by radio stations at the provincial... level" are eligible for admission to the ACM. As another example, music educators "who work in specialized art institutes and hold the title of Associate Professor" or "who hold associate senior titles in musical teaching" would also be eligible for admission. Finally, the membership rules indicate that the ACM would admit performers "who have worked in a specialized group [at the] provincial... level as solo[ists]" or "who hold [the] professional title of second-class performing artist." We further note that there is no evidence showing her admission to membership was evaluated by recognized experts at the national level.

The petitioner also submitted evidence of her membership in the China Association of Traditional Chinese Orchestral Music. The petitioner provided additional documentation showing that she served on various committees such as the Zither Committee of the China Association of Traditional Chinese Orchestral Music and the 8th and 9th Committees of the National Union of the Youth. The petitioner provides no membership bylaws for the Committee of the National Union of the Youth or the China Association of Traditional Chinese Orchestral Music. In regard to her election to the Zither Committee, its constitution permits the admission of "specialists or professors with great popularity and authority in the zither society" or "professionals... with intermediate or senior professional titles in this area." We find that holding a particular "professional title" would not qualify as an outstanding achievement as contemplated by the regulations.

A review of the documentation presented does not establish that the above associations in which the petitioner holds membership require outstanding achievement in music or that she was evaluated by recognized national or international experts in consideration of her membership.

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.

We withdraw the director's finding that the petitioner's evidence satisfies this criterion. 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 would not 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 would qualify as

major media because of significant national distribution, unlike small local community papers.

The petitioner submitted a total of ten articles under this criterion. Nine of these articles were published between 1986 and 1994. Because the statute and regulations demand *sustained* national or international acclaim, the petitioner must establish that she has been the subject of regular coverage in major national or international publications up until the filing date of the petition. The record, however, contains evidence of only one published article subsequent to 1994. That article, published in April 2000, appeared in the English language newspaper *China Daily*. Because this newspaper is circulated only among a limited, non-Chinese speaking segment of China's population, it does not demonstrate that the petitioner has earned sustained national acclaim in China.

Several of the newspaper articles (such as those appearing in the *Fuzhou Evening News*, *Fujian Daily*, and *Zhuhai Zone*) devote only a few brief sentences to the petitioner. The plain wording of the regulation, however, requires the petitioner to submit "published materials about the alien," and articles that barely even mention her do not satisfy this criterion. Articles appearing in the *Fujian Daily* and *Macao Daily* are reflective of local or regional, rather than national or international, media attention. Other articles were accompanied by partial English language translations. By regulation, any document containing foreign language submitted to CIS 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 complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that she was featured because of her extraordinary achievements.

For the above stated reasons, we conclude that the evidence presented fails to demonstrate that the petitioner has captured sustained national attention from major Chinese media.

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 from the Traditional Music Instrument Branch of the China Music Instrument Association stating: "[The petitioner] is appointed to be the judge of the 1998 Grand Contest for Making Chinese Instruments." The brief, vague information stated in the letter offers no details about the petitioner's involvement as a judge or the national significance of this contest. While the record contains an image of the petitioner appearing on a music publication of unknown distribution in 2000, she has presented no published pieces describing the 1998 contest or its level of competition. The available evidence is not sufficient to allow the conclusion that this event is one of the most prestigious national music events in China.

In response to the RFE, the petitioner submitted letters (dated July 2001) appointing her as a judge at the finals of the Long Yin Cup and Tian Yi Cup music contests. This evidence, however, came into existence subsequent to the petition's filing date. *See Matter of Katigbak, supra.*

Also submitted was a letter from the Hunan Provincial Orchestra Society and Hunan Province Folk String Music Society "inviting" the petitioner to participate as a judge at the 1997 Xiang Zheng (Hunan Zither) Cup competition. The information presented indicates that this competition was provincial, rather than national or international, in scope. Further, the record contains no documentation confirming the petitioner's "participation" as a judge or evidence of national or international publicity surrounding this event.

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

The petitioner's field of endeavor is not one in which one is expected to produce published material on a regular basis. The petitioner submitted evidence confirming her authorship of an article appearing in *People's Music* and an instructional textbook, *Traditional Chinese Basic Zither Instruction*. The evidence presented by the petitioner shows that these publications were nationally circulated and therefore we conclude that her evidence is sufficient to minimally satisfy this criterion.

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

We have consistently found that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. Virtually every musician, actor, and other performing artist "displays" his or her work in the sense of performing in front of an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's concert performances will be addressed below under a separate criterion. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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

In order to establish that she performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

The petitioner provides evidence showing that she was appointed as one of seven Vice-Secretary Generals for the "Zither Committee of the China Association of Traditional Chinese Orchestral Music." According to this organization's constitution, the petitioner is subordinate to a Chairman, twelve Vice-Chairpersons, and one Secretary General (1). The constitution states: "The Chairman is responsible for the Board of Directors and the Secretary General is responsible for routine duties of the institute." We find that overseeing "routine duties of the institute" as one of seven subordinates to the Secretary

General is not reflective of a "leading or critical role." The record contains no evidence indicating the importance of the petitioner's role in relation to the Zither Committee's numerous other officers nor published material showing that the committee itself enjoys a distinguished national reputation.

Also submitted was a letter appointing the petitioner as a member of the Academic Organizing Committee of the Third Chinese Ancient Zither Arts Academic Exchange Conference (1996). The record contains no evidence detailing the specific nature of the petitioner's duties as a committee member or evidence showing that the petitioner's role was more important than that of the other members. It is not apparent that sitting on a planning committee for a one-time event such as this constitutes playing a leading or critical role for an for an "organization or establishment that has a distinguished reputation." Regardless, the record contains no evidence showing that the conference organizing committee from 1996 earned a distinguished reputation.

We find that the evidence presented fails to establish that the petitioner has performed in a leading or critical role for a distinguished organization or establishment, or that her involvement attracted sustained national or international attention.

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 evidence that she has performed on CDs. However, such performances are not prima facie evidence of extraordinary ability, because one need not be a top figure in the field in order to release a CD. Further, there is no evidence that her CDs have been sold, much less that the petitioner has made a profit for her work. The petitioner submits no documentary evidence regarding the commercial success of any of her work. The regulation calls for "record, cassette or compact disk sales;" simply documenting the petitioner's participation in various projects or events cannot meet the plain wording of the regulation.

Counsel asserted that the petitioner has "put on performances on very important occasions." While the petitioner submitted copies of programs from various venues where she has performed, the record contains no evidence of documented "sales" to show that these performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

Beyond the petitioner's failure to demonstrate that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the statutory language at section 203(b)(1)(A)(ii) requires an alien seeking to enter the United States to "continue work in the area of extraordinary ability." The petitioner's intention to perform and teach zither music in the United States is not in dispute; the record shows that the petitioner has declared this intention in an employment contract with A&A Enterprises. The director noted, however, that A&A Enterprises, which filed articles of incorporation in January 1999, does not appear to have "any facilities, income, business, or ability to pay the petitioner." Pursuant to 8 C.F.R. § 204.5(h)(5), the petition must be "accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise." The regulation further states that pre-arranged commitments such as contracts are an acceptable form

of evidence. That being said, without evidence showing that A&A Enterprises has the facilities and resources to support the petitioner in achieving her stated goals, we cannot conclude that the contract constitutes "clear evidence" that the petitioner will continue working as a teacher and player of the zither. It is not apparent how a contract between the petitioner and a company with no known business facilities or assets constitutes "clear evidence" of a viable future employment opportunity in the United States. We therefore concur with the director that the evidence now in the record fails to show that the petitioner's employment as a zither teacher and player will be the petitioner's primary occupation and source of income in the United States. Because the petitioner seeks an employment-based immigrant classification based on her ability as a musician, it is reasonable to require evidence that she will continue to support herself as a zither player and teacher once in the United States.

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 does not establish that the petitioner has distinguished herself as a zither player and teacher to such an extent that she may be said to have achieved sustained national or international acclaim. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at the 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.