

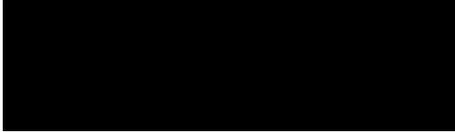
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, N.W.  
Washington, DC 20536



File: WAC-01-213-58655

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)

ON 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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner asserts that the case was denied “partly due to your prejudice and misunderstanding of my case, partly due to the attorney’s incompetence to completely and correctly present my profile to you, and partly due to the unavailability of some documents and information you requested in support of the application.”

As the petitioner concedes that some documentation requested by the director was previously unavailable, we find no evidence that the director was prejudiced against the petitioner or unfairly failed to understand the evidence submitted. The petitioner has now submitted more documentation to support his previous claims. We will consider that evidence below.

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 CIS 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 seeks to classify the petitioner as an alien with extraordinary ability as a composer. 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.*

The petitioner submitted evidence of the following awards:

1. The Gold Award for Songs and Music at the National First Peacock Cup Competition in May 1986;
2. The MUDAN Award for popular music in the First National Youth Music Competition in May 1986;
3. A music award and a MUDAN award at the First National Competition for Folk and Popular Songs in February 1986;
4. Second prize in the National Selection of Songs in 1987, sponsored by the Kueizhou People's Broadcast Center, the China Musicians' Association, and the Kueizhou East-China Music Image Company.
5. First prize at the China National Excellent Songs and Music Competition in October 1992, sponsored by the China Ministry of Culture, the China Musicians Association, and China Central TV;
6. First prize at the Fourth China National Broadcast Songs and Music Composition Competition in 1994;
7. The Gold Award at the Fifth China National Artistic Songs and Music Composition Competition in 1995;
8. First prize for music creation and production in the Symposium for Movie and TV Music in 1997;
9. Gold Prize at the World Chinese Movie and TV Music Display in 1998; and

10. Gold Prize at the First International Roland Digital Music Competition in 1999, sponsored by the China Ministry of Culture, the China Musicians Association, the Japan Roland Society, and the International MIDI Association.

In response to the director's request for additional documentation, the petitioner submitted certification from an unidentified entity indicating that there were 53,000 professionals and amateurs competing at the First National Competition for Folk and Popular Songs where eleven songs were honored with awards. The petitioner also submitted his own statement asserting that the above awards were all national awards and that there were three gold/first place awards at each event. We note that simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The director concluded that the petitioner had not established the significance of his awards.

On appeal, the petitioner submits a letter from the Chinese Association of Musicians asserting that the National Youth Singers Contest is a national government contest with 5,300 contestants lasting four to five months with only three contestants from each province entering the finals. In addition, an article in *People's Daily* reports that the First National Folk Songs and Popular Songs Competition included 5,300 contestants.

The petitioner must demonstrate sustained national acclaim up until the date of filing the petition. The petitioner won the above contests in 1986, 15 years before filing the instant petition. Even if we considered the remaining awards, the most recent was in 1999, two years prior to filing the petition. Had the petitioner submitted evidence relating to other criteria demonstrating that any acclaim he enjoyed in 1999 continued up until the date of filing, the above awards might be considered sufficient. While a petitioner need only demonstrate national, and not international, acclaim, we cannot ignore that the petitioner entered the United States in 1999, two years prior to filing the instant petition. The petitioner has not demonstrated that any acclaim he may have enjoyed in China has been sustained in the United States during his two-year residence here.

*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 is a First Rank Music Composer in China. The petitioner submitted the minutes of a meeting of the China Musicians Association asserting that first rank composers are equivalent to professors. The minutes further state that the requirements for the rank "include: has obtained a college diploma or degree in the profession; has been conferred the first-lace award in a national competition or symposium for music invention; has published and displayed a substantial number of works at home and abroad; recognized by the national music profession as having acquired outstanding achievement and great influence." The list does not include either "and" or "or" between the

requirements.<sup>1</sup> Thus, the list does not indicate whether a First Rank composer must meet all or only one of the requirements. The minutes conclude that there are only 168 First Rank composers.

The director concluded that the petitioner met this criterion. We cannot concur. Having the rank of a professor is not indicative of national acclaim. As stated above, the record does not establish whether a First Rank composer must meet all or only one of the requirements. Having a college diploma or degree in the profession is not an outstanding achievement. Finally, the minutes do not specify whether there are only 168 First Rank composers nationally or in a specific Chinese province. In light of the above, the petitioner has not established that his ranking is sufficient evidence to meet this criterion.

The petitioner also submitted evidence of his membership in the China Musicians Association, the China Digital Music (MIDI) Association, and the American Overseas Chinese Artists Association. While the latter organization asserts that its members are “outstanding artists from all over the world,” the record does not include evidence of how members are chosen and the selection criteria. The organization also claims to be the “World’s Largest Chinese Organization in art exchanges,” suggesting that membership is not exclusive. It remains, the record does not include the membership requirements for these organizations. As such, they cannot serve to meet this criterion.

*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 relies on his inclusion in the 1990 and 1998 editions of *Who’s Who in the World (Chinese Volume)* published by the World Cultural and Arts Research Centre in conjunction with the China International Exchange Center, the 1997 edition of *The Dictionary of Chinese Celebrities in Music* and Volume Four of the *Chinese Celebrities in Art and Literature in the World. The Dictionary of Chinese Celebrities in Music* also selected the petitioner as one of 200 artists out of 12,000 listed in volumes one through five for a “mini book.” The petitioner also submitted a television guide listing for a January 9, 1993 program entitled “Music Production – on the music of [the petitioner].” The petitioner also submitted photographs of himself on television, allegedly as part of the television series “The Horizon of Science and Technology” and the series “The Music Production Man.” The Executive Director of the China Musicians Association indicates that the television programs were broadcast by a Jiangsu Province station. Initially, the petitioner also submitted as exhibit 28 two English translations of articles published in unidentified newspapers and a single Chinese-language article. Counsel refers to this exhibit as “a special report about [the petitioner] in Southern California News.” The translated articles are entitled “The Music Epic of the People’s Republic: Create the Historical River in its Muscularity” and “Once Strayed, it is Hard to Return: Electronic Musician [the petitioner].” The petitioner also submitted an abstract of a 1994 article in the Chinese-language publication *Music Life*. Without a translation of the entire article, however, we cannot determine

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<sup>1</sup> On appeal, the petitioner asserts that “at home and abroad,” should read “at home or abroad.” This assertion does not address whether a First Rank Composer can achieve that rank by meeting only one of the listed criteria.

whether the article is primarily about the petitioner. In addition, the record contains no evidence regarding the circulation of *Music Life*.

The director concluded that the petitioner had not established that the above coverage occurred in major media. On appeal, the petitioner submits a letter from the Hong Kong International Press discussing the prestige of being included in *Who's Who in the World*, evidence that China National Music Radio Station broadcast a live performance of the petitioner's work in 1994, "Definition of Music Man" published in 1993 in *Music Weekly*, and evidence that *Music Life* has a national distribution in China of one million.

Appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim. Thus, the petitioner's inclusion in various "Who's Who" volumes or "celebrity" dictionaries is insufficient to meet this criterion. The television programs appear to have been broadcast locally in Jiangsu province. It is inherent for a successful musician or composer to have his songs played on the radio. The petitioner has not provided full translations of the articles in *Music Weekly* and *Music Life*, and, thus, has not demonstrated that the articles were primarily about him. The petitioner has not demonstrated that the most significant articles about him, "The Music Epic of the People's Republic: Create the Historical River in its Muscularity" and "Once Strayed, it is Hard to Return: Electronic Musician [the petitioner]," were published in major media. We note that if published in Chinese-language publications in the United States they cannot be considered major media as they are not printed in a language that the majority of the population comprehends. Thus, the petitioner has not provided evidence relating to this criterion that is indicative of national acclaim either in China prior to 1999 or in the United States during his two-year residence year prior to filing the petition.

*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 evidence that he served as a judge for the China Broadcast Music for Songs Competition in 1989 and the National Songs Competition in 1993. In addition, the China Ministry of Culture and the China Musicians Association affirmed in 1995 that they "employ [the petitioner] as a judge for music composition, for The China Ministry of Culture and The China Musicians Association, for a term of five years." In response to the director's request for additional documentation, the petitioner submitted his personal statement asserting that "only a first-rank composer in China can serve as a judge for the judge panel of China Musicians Association for a term." The director concluded that the petitioner had not demonstrated the significance of these judging invitations.

On appeal, the petitioner submits an affidavit from Whenhua Xu on China Central Television letterhead. The affidavit asserts that the petitioner participated on the judging panel for the 1989, 1993, and 1995 Broadcasting New Songs Competition, an annual national competition sponsored by China National Radio. The petitioner was also invited as a judge in 1999, but had left China. While this information addresses the director's concerns and is consistent with the petitioner's claim to have enjoyed some acclaim in China, the petitioner has submitted no evidence that this acclaim has continued up until the date of filing.

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

The petitioner's claim to meet this criterion appears to derive from his work with digital music in China, where he claims to have pioneered the concept of digital music. On appeal, the petitioner expands on this claim, asserting that he opened a music business in 1989, Jiangsu Oriental Culture Exchange Center, which became nationally known for digital music. The petitioner claims to have altered the digital sounds of Western music to create the sound of traditional Chinese instruments digitally.

The record contains a letter from the Chief Director of the Recording Technical Committee of China Association for Recording asserting that the petitioner is "one of China's first and famous musicians to us[e] digital systems to compose music." The letter further states that the petitioner was recommended by the China Computer Music (MIDI) Association, to the International MIDI Association "as an exceptionally prominent composer in using digital systems."

In addition, in 1995, the petitioner was invited to be the Deputy Chief of the Jiangsu Oriental Culture Exchange Center and to be the General Manager of their Central Voice Image Division based on his "achievement in the music career and [his] contribution to the society." The petitioner does not explain the significance of an invitation from his own business.

Further, counsel asserts that "in 1999 [the petitioner] was selected to be one of a twenty-member delegation by the Committee for World Celebrities to visit seven European countries; all members were persons of extraordinary ability in [a] certain field, as stated in the notification." The notification to which counsel refers, however, merely indicates that the Committee for the Dictionary of Chinese and Foreign Celebrities selected "20 persons of exceptional ability from all listed in Volumes 1 through 5 to visit Europe." The petitioner is not named.

The director concluded that the petitioner had not established how his alleged contributions were original and considered to be major as compared with others in the field.

On appeal, the petitioner submits evidence of the album "Soul of the Taihu Lake." The credits list the petitioner as one of four individuals responsible for the "taping." First, the petitioner has not demonstrated the commercial success of this album. Regardless, the petitioner is seeking classification as an extraordinary composer. His work taping the music of others is not relevant to his claim.

The petitioner also submits evidence that he was responsible for the instrument selection and audio/video making for the video compact disc (VCD) set, "Song of an Honest Government;" the music for the television play "A Century's Dramatic Change;" and the music generation/chorus conduction and audio taping/video editing of chorus of "The Music Epic of the Republic" performed at the Jiangsu Opera House. The petitioner also submitted three identical reports of the VCD set becoming available in Los Angeles. The record does not reveal whether these are advertisements or press releases or the nature of the publications in which they appear. The original Chinese-language copies from the *International Daily News* and the *China Press* appear to be altered and have photos

glued over the California addresses and phone numbers, and the original Chinese-language copy from the *Sina Global News* does not appear to be copied out of a newspaper. In addition, the petitioner submits a certificate for the Gold Award of Video Works of the World Chinese Art Cup presented to the petitioner in December 1998 in recognition of his work on "The Music Epic of the People's Republic," and a *Tung Hua Daily News* article indicating that the competition was sponsored by Hong Kong of China and the American Association of Overseas Artists.

The above evidence at best reflects that the petitioner has been able to work in his field. Simply working in one's field is not a contribution of major significance. The record contains little evidence of the significance of his addition of traditional Chinese instruments to digital music. The petitioner has not explained how this addition involved more than sampling the instruments. While the epic might have been a long term project that was recognized at a competition of unknown significance, the record does not demonstrate how this project has changed the world of music composition or digital music. Thus, the petitioner has not overcome the director's concerns regarding this criterion.

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

In response to the director's request for additional documentation, counsel asserted that the petitioner met this criterion through the dissemination of his music. The director did not address this claim and the petitioner does not continue to claim that he meets this criterion on appeal. We find that this criterion does not relate to the petitioner's field.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

This criterion is the only one that specifically pertains to the petitioner's field, yet he does not claim to meet this criterion. While a petitioner need not meet any specific criterion, it can be expected that a nationally acclaimed composer and musician would be able to demonstrate the commercial success of his albums. While the Executive Director of the China Musicians Association asserts that the petitioner's song, "China, China, the Bright Sun Never Down" is known in every Chinese household, the record contains no evidence to support that assertion, such as the official sales figures for the album on which that song appears. The petitioner provides no explanation for his claim to be a nationally acclaimed composer despite the lack of evidence documenting the commercial success of his music.

Finally, on appeal the petitioner asserts that his entry into the United States has already been benefiting the United States. As stated above, the petitioner had resided in the United States two years prior to filing the instant petition. The issue is not whether he has benefited the United States, but whether he has sustained any acclaim he may have had in China during those two years in the United States. The petitioner claims only to be a "recognized music celebrity in the Chinese communities in Southern California." Recognition among a single cultural group in a limited portion of one state cannot be considered national acclaim in the United States. We note that in response to the director's request for additional documentation, counsel asserted that Voice of America had offered the petitioner \$80 per hour to work with them upon receiving work

authorization. While such a significant salary offer might be indicative of the petitioner's continuing reputation in the United States,<sup>2</sup> the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence to support counsel's claim.

In summary, at best the petitioner has established that he had received national awards and judged the work of others prior to entering the United States. The petitioner has not established that he meets any of the additional criteria or that he has sustained any acclaim he may have had in China upon entering the United States two years before filing the instant 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 petitioner has distinguished himself as a composer 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 indicates that the petitioner shows talent as a composer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.

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<sup>2</sup> An offer of a high salary cannot serve to meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ix) relating to significantly high remuneration as the petitioner had not already been paid the salary as of the date of filing. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).