

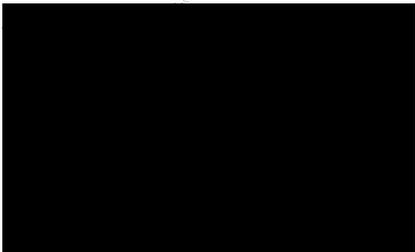
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U.S. Citizenship  
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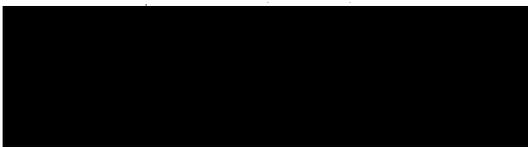
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FILE: EAC 02 252 51707 Office: VERMONT SERVICE CENTER Date: APR 27 2005

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)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office 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.

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 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, counsel asserts that the director dismissed the evidence without sufficient explanation. While the director's analysis of each regulatory criterion is brief, we find that the petitioner had sufficient notice of the deficiencies in the record. We will discuss the criteria claimed by the petitioner in more detail 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 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 an author. 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.

In her decision, the director stated that meeting three criteria "does not automatically establish the [petitioner's] eligibility for the classification" sought. While we may not agree with the exact wording of this

statement, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director's decision is that the petitioner submitted documentation that related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim.

The petitioner has submitted evidence that, he claims, meets the following criteria.<sup>1</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner received the following awards limited by region or age:

1. Outstanding Librarian Award from the Tieling City Library in December 2001;
2. Two Golden Cup Awards in Chinese Poem for Youngsters Contest organized by the China Essay and Poetry Association, the China Contemporary Writers Friendship Association and the China Poetry Association in October 2000;
3. Third Prize of Public Library Service Achievements of Liaoning Province for the Year[s] 1995-1997;
4. Outstanding Achievements Award for Cultural Promotion from the Cultural Bureau of Tieling City in April 1997;
5. Second Prize of Public Library Service Achievements of Liaoning Province for 1990;
6. First Prize in the Speech Contest of Tieling City in May 1990;
7. Outstanding Achievements Award for Commercial Economy Promotion for 1998 from the Cultural Bureau of Tieling City in December 1988; and
8. Individual Especially Remarkable Achievements Award from the Cultural Bureau of Liaoning Province in February 1988.

The record lacks evidence that the above awards are nationally or internationally recognized. Rather, they appear limited to a region or by age. In 1993, a collection edited by the petitioner received a "China National Excellent Bestsellers in the National Publication Evaluation" certificate. In 2002, the petitioner received the Second Prize in the First Chinese Contemporary Poetry Contest organized by the Luxun Literature Academy of Chinese Writers Association.

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The director concluded that the awards submitted were mostly issued well before the petition was filed and that the petitioner had not submitted evidence "that would demonstrated the significance of these awards, to include who was eligible to compete for the award and the criteria used to grant the award."

On appeal, counsel asserts that the statute and regulations do not require the awards to be recent. The petitioner provides additional materials on the "National Book Prize" issued by the China News and Publishing Bureau, the highest prize for books, and the Luxun Literature Academy that sponsored the 2002 poetry contest where the petitioner received an award.

The statute, section 203(b)(1)(A) of the Act quoted above, states that eligibility for the classification sought is "demonstrated by *sustained* national or international acclaim." (Emphasis added.) Thus, while the evidence submitted to meet each criterion need not be recent, the record must contain evidence indicating that any prior acclaim has been sustained up until the time of filing. Thus, the director did not err in noting when the awards were issued.

More significantly, the petitioner has not established that the awards he has won are nationally or internationally recognized awards. The petitioner has now submitted evidence regarding the prestige of the National Book Prize. The record, however, does not indicate that the petitioner won this award. The bestseller certification for the book edited by the petitioner is issued by the Evaluating Association of the China National Excellent Publications. The petitioner has not demonstrated that this association is the same as the China News and Publishing Bureau, the entity that issues the National Book Prize. Moreover, the petitioner has not established that the bestseller certification is the same as the National Book Prize. Regardless, the award was issued to a book edited by the petitioner. The record is not persuasive that such certification is indicative of the petitioner's acclaim as an author.

The record now establishes the prestige of the Luxun Literature Academy, China's first and only higher educational institute to train literature professionals. Nevertheless, the record still lacks evidence of the significance of the First Chinese Contemporary Poetry Contest sponsored by that school and the awards presented there. Specifically, the record does not reflect the number of applicants, whether the applicants originated from all over China, and how many prizes were issued. Thus, the record still does not establish that the petitioner received a nationally or internationally recognized award or prize.

*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 member of the following associations:

1. The World Chinese Writers Association;
2. The North-East Region of China Essay and Poetry Research Association;
3. The China Contemporary Writers Friendship Association;
4. The Tieling Writers Association;
5. The Tieling City Literature and Arts Circle Union; and
6. The Library Association of Liaoning Province.

The director concluded that the petitioner had not established membership in associations that require outstanding achievements of their members. On appeal, counsel asserts that the Chinese Writers Association "is an elite organization of Chinese writes and literature professionals." The petitioner submits the bylaws of this association, which provide:

Those who endorse this Bylaws [sic], have published with certain level of standards literature creation, theoretic research, translation, or engaged in edition, teaching and management and have great accomplishments are eligible to apply for membership. A candidate shall make application with recommendation from provincial writers association. Then the applications shall be reviewed for approval by Secretariat Meeting.

The portion of the bylaws translated, however, does not provide the more specific membership requirements. Specifically, "great accomplishments" are not defined and no examples are provided. Any poet or novelist who makes a living as a poet or novelist must publish his work. Thus, mere publication is not an outstanding achievement in the field. Moreover, this office consistently holds that recommendations from current association members are not outstanding achievements.

The petitioner also submitted evidence of director and consulting responsibilities with other associations. Positions within an association are not memberships and do not relate to this criterion.<sup>2</sup> In light of the above, we concur that the petitioner has not met this criterion.

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

The director concluded that the record contained no evidence of the petitioner's contributions of major significance to his field. We agree with counsel that more discussion of this criterion is warranted.

██████████ Vice Editor-In-Chief of *China Art*, asserts that the petitioner has "won appraisal" from Chinese and foreign writers and that he has a "very high reputation across Chinese literature circles. ██████████ continues that Chinese publishing houses have published "[o]ver tens" of the petitioner's books ██████████ Director of the China Prose and Poetry Association, praises the petitioner's abilities as a poet and asserts that the petitioner's poems have been published in China and abroad in different languages. Feng Hong asserts that, in the past two years, the petitioner won two "Prize of the Best Chinese Writers." Those awards are not part of the record. ██████████ further asserts:

The characteristics of his creation combine national traditions and modern awareness, and take every object as the medium to express the ideal and pursuit of human life. It covers all the meanings of life while he himself stands at a higher altitude of humanity.

Wei Fan, Editor-in-Chief of the Publication and Editing Department of the Shenyang Literature Association and a Director of the China Contemporary Poem Publishing Foundation, asserts that the petitioner's novels are bestsellers in China and have sold over 100,000 copies. All of these references purport to be good friends of the

<sup>2</sup> The petitioner has not submitted evidence about the reputation these entities enjoy, the nature of his responsibilities as a director or consultant and the number of others holding a similar position with these entities that would warrant consideration under other criteria not claimed.

petitioner. Letters from the petitioner's immediate circle of colleagues cannot demonstrate that he is known beyond those colleagues. While [REDACTED] does not purport to be a good friend of the petitioner, he provides only the most general praise of the petitioner's work. None of the references explain how the petitioner has already impacted the field of literature.

The Tieling City Library affirms that the petitioner "has made great contribution to the development of the library." This attestation does not identify the contribution or explain how it has impacted the field of literature. In light of the above, we concur with the director that the petitioner has not established that he meets this criterion.

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

The petitioner lists his "pen name" on his resume as [REDACTED]. The record contains no independent confirmation of this alias. The petitioner submitted an "Anthology of [REDACTED] for the years 1985 to 1988, "Death, Desertion and Empty Boat" by [REDACTED] and "Bird with Returned Soul" by [REDACTED] appearing in "The Anthology of [REDACTED]. The petitioner also submitted a summary of an anthology of the work by the poet [REDACTED]. The summary asserts that this poet has sold over 3.5 million copies of his work. The translation of this summary, however, is not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, the record contains no evidence explaining the relationship of [REDACTED] to the petitioner. [REDACTED] is credited with the introduction to "The Collection of Cultural New Wave on the Campus in the 1990's." [REDACTED] is also listed as the editor of the volumes and the individual who selected the poems to be included for some of the volumes.<sup>3</sup> This collection received the China National Excellent Bestsellers award in November 1993.

Finally, the record contains a certificate from the Tieling City Library Association verifying that the petitioner presented his theses, *The Social Effect of the Science and Technology Consulting Services* and *The Service Achievement of the Star-Fire Project*, at an academic seminar sponsored by that association in December 1987.

Writing poetry is not authorship of scholarly articles about the field of poetry. The introduction by [REDACTED] merely contains reflections about poetry, and is not a scholarly analysis of the subject. The petitioner has not established that his theses are published. The record is absent evidence that the petitioner has authored scholarly analysis of poetry or other literature published in professional or major trade publications or other major media.

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

While the petitioner does not claim to meet this criterion, we note that evidence of significantly high sales of the petitioner's authored work in comparison with other poets might be considered comparable evidence to meet this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The record, however, does not contain any objective evidence of the petitioner's book sales or evidence that would allow us to compare those sales with the sales by other poets.

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<sup>3</sup> The record contains insufficient evidence regarding the selection process and responsibilities of the editor such that we could evaluate this evidence under another criterion not claimed.

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.

In addition the discussion above, we note that on the petitioner's resume, he lists his professional title as "intermediate" and his "post" as "amateur poet, writer of Chinese Liberalism." The record contains the petitioner's "intermediate" credentials. These characteristics are not consistent with a writer of national or international acclaim. Nor do they suggest that the petitioner is one of the very few at the top of his field. We note that his references are "advanced" poets, suggesting that the top of the petitioner's field is higher than the level he has attained.

Review of the record does not establish that the petitioner has distinguished himself as a poet 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 poet, 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.