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**U.S. Citizenship  
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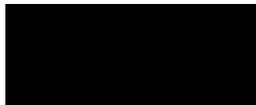
Office: VERMONT SERVICE CENTER

Date: **DEC 27 2005**

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:

SELF-REPRESENTED

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.

*Mari Johnson*

*R* 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.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on November 17, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese Peking Opera Actress."

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, internationally 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 pertaining to 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 the following:

1. "Certificate of Award" (undated) stating that the petitioner won the "Excellence Prize of Peking Opera Solo Performance in Wuhan City Music and Dance Competition of Youth and Teenage [sic]"
2. "Certificate of Award" stating that the petitioner "was granted the title of 'Best Young Artist' in Guangdong Star Shining Art Festival" (February 1997)
3. "Certificate of Honor" stating that the petitioner "won the second grade award of Chinese Traditional Opera Dance of Youth Group in the 'Peach and Plum Cup' Youth Dance Competition of Liaoning Province (April 25, 1997)
4. "Certificate of Award" stating that the petitioner won the "'Opera New Star Award' in 1998 National Traditional Opera Performance Grand Contest" (August 15, 1998)
5. Certificate stating that the petitioner "was awarded for her contribution in the 3<sup>rd</sup> National Competition of Peking Opera" (May 1995)
6. "Certificate of Performance" stating that the petitioner "participated in the show of year 97 Chinese Tourist Art Festival and Guangdong Carnival" (October 1997)
7. "Award Certificate" stating that the petitioner's performance in "Eight Treasures Soup" was "awarded year 1999 Golden Prize"
8. "Award Certificate" stating that the petitioner was named as an "Outstanding Artist" in 2000
9. "Award Certificate" stating that the petitioner was named as a "National Top Ten Peking Opera outstanding person" in 2001
10. "Award Certificate" stating that the petitioner's performance in "June Snow" won the "Central Committee Television top grade prize" (2002)

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (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. The translations accompanying the petitioner's award certificates were not certified as required by the regulation.

In regard to items 1, 2, 3, and 4, there is no indication that the petitioner faced competition from throughout her field, rather than her approximate age group within the field. A youth award offers no meaningful comparison between the petitioner and established performing arts professionals. Items 1, 2, 3, and 6 reflect local or provincial recognition rather than national or international recognition. In regard to items 5 and 6, there is no evidence showing that these certificates are nationally recognized awards for excellence in the performing arts, rather than simply an acknowledgement of the petitioner's participation in a particular event.

In regard to items 1 through 10, the record includes no information about the competition for these awards (such as the eligibility criteria, the number of entrants, or the percentage of entrants who earned some type of recognition). It is typical for large-scale competitions to distribute event programs listing the competitive categories and the names of the participating contestants. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other contestants in his or her category. The record, however, includes no such evidence. Further, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of

recognition. Because the statute requires "extensive documentation" of sustained national or international acclaim, the petitioner must submit evidence showing that his awards enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or the print media establishing that the petitioner's awards are nationally or internationally recognized performing arts awards.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. 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 submitted evidence of her membership in the "World Association of Beauty Culture" of Flushing, New York and the Chinese Dramatist Association. The record, however, includes no evidence of the bylaws or the official admission requirements for these associations showing that they require outstanding achievement in the performing arts. According to the translation accompanying the petitioner's membership card from the Chinese Dramatist Association, her membership grade is listed as "Second-Grade Artist." The petitioner does not explain how being a "Second-Grade Artist" indicates that she is one of that small percentage who have risen to the very top of the performing arts field. See 8 C.F.R. § 204.5(h)(2). We further note that the petitioner's "Working Unit," the Peking Opera Troupe of Hong Kong, is a local organization rather than a national or international organization. In this case, there is no evidence demonstrating that admission to membership in the preceding associations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership.

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

The petitioner submitted various photographs of what are alleged to be her stage performances. This particular criterion, however, is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. Virtually every actress "displays" 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 stage performances are far more relevant to the "commercial successes in the performing arts" criterion.

Even if we were to address the petitioner's performances under this criterion, she has not demonstrated that her performances have consistently been the centerpiece of major productions at prestigious venues. Such a standard must be set for the petitioner to establish that she enjoys sustained acclaim near the top of her 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 calls for commercial success in the form of "sales" or "receipts"; simply submitting what are alleged to be photographs of one's performances cannot meet the plain wording of the regulation. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). As noted previously, this regulation and section 203(b)(1)(A) of the Act require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been present in the United States since August 31, 2002, but there is no evidence showing that she has been involved in any work related to Peking Opera performances during the last three years. Specifically, the petitioner has been the beneficiary of an approved P-3 nonimmigrant petition that authorized her to work in the United States as an artist/entertainer from March 1, 2003 to March 1, 2004 (SRC 03 051 52110, filed by the Northern Cultural Exchange Center). Astonishingly, the petitioner has submitted no evidence of her work as a performer even during that authorized period. Based on the lack of evidence that the petitioner has been working in her area of expertise, she has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as a performer 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 petitioner'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.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record contains no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.