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Washington, DC 20529



U.S. Citizenship  
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Services

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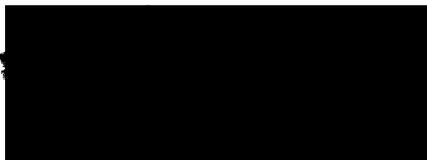
Office: VERMONT SERVICE CENTER

Date: JUL 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.

for  
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 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 1, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a dancer.

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 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.*

We note that the plain wording of this criterion requires “nationally or internationally recognized” prizes or awards for excellence in the field. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with her individual awards.

The petitioner submitted evidence of her receipt of the following:

1. “Second Prize during the National Contest in Dancing of the Minor Ethnic Groups” for her performance in “The Smooth Sea and the Moonlit Night” (December 1994)
2. “First Prize for Performance during the Third Contest in Dancing . . . in Inner Mongolia Autonomous Region” (September 1990)
3. “First Prize for the Professional Group during the Shenzhen’s First Grand Dancing Contest in 1999”
4. “First Prize for Performance . . . in ‘Qige Festival’ during the Fourth Contest in Dancing in Inner Mongolia Autonomous Region” (July 1994)
5. “First Prize for Performance” for “the program ‘Pounding Tea’ participated in by [the petitioner] during the Fourth National Contest in Dancing” (October 1996)

We note that items 2, 3, and 4, constitute regional or local recognition rather than national or international recognition.

The significance and importance of the remaining prizes are not self-evident. The evidence of record does not indicate the total number of certificates annually distributed by the entities that recognized the petitioner, how many other individuals achieved a level of recognition similar to that of the petitioner, the criteria used in determining recipients for each particular prize, or the level of media coverage associated with the award presentations. 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 adequate evidence to establish that the certificates presented under this criterion enjoy significant national stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. Contemporaneous evidence of national recognition associated with the awards is of far greater evidentiary value, particularly when the statute requires “extensive documentation” of sustained national or international acclaim.<sup>1</sup> In this case, the petitioner has not shown that her prizes are widely recognized beyond the organizations that presented them.

In his October 30, 2002 letter accompanying the petition, counsel states that the petitioner has received the following international awards:

1. “International Dance Master Award” from the “U.S. – China Arts Exchange Center, Inc.” of New York (August 2002)

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<sup>1</sup> For example, large-scale dance competitions typically issue event programs listing the order of events, the name of each specific event, and the names of the participating dancers. At a competition’s conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official results for the competitions in which she received prizes.

2. International Gold Award from Art Resources for Teachers and Students, Inc. of New York (February 2002)
3. Award of Excellence from the New York Chinese Cultural Center (June 2002)

The record, however, contains no first-hand evidence of these awards. Nevertheless, we note that all three of these awards reflect institutional or local recognition rather than international recognition.

Counsel's October 30, 2002 cover letter indicates that the petition was accompanied by "18 Certificates of Awards [the petitioner] Won," but the record includes first-hand evidence of only the five certificates cited on page three of this decision. Without evidence of the remaining 13 certificates, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

*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 provincial level. Therefore, membership in an association that evaluates its membership applications at the local or provincial 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 a certificate issued by the Ministry of Personnel for the People's Republic of China indicating that the petitioner passed the examination for the "qualification level" of "Grade 2 Performer." The petitioner also submitted a letter from [REDACTED] of the Mongolian Dance Association of China who states that the petitioner "is a State Performer Grade 2 (second-best)." This evidence reflects the petitioner's level of qualification rather than her "membership in an association in the field." We find no indication that attaining a qualification level of "second-best" reflects that the petitioner has "risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). Nor is there evidence showing that being a "Grade 2 Performer" satisfies any of the other regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The petitioner submitted evidence of her membership certificate for the "Inner Mongolia Association of Dancers." The record, however, includes no evidence of the bylaws or official membership requirements for this association. There is no evidence showing that the petitioner's admission to membership required outstanding achievement or that she was evaluated by 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.*

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 or international distribution. An alien would not earn acclaim at the national or international 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.<sup>2</sup>

The petitioner submitted several brief articles appearing in Chinese-language newspapers published in New York in 2002.<sup>3</sup> Aside from the petitioner not being the primary subject of many of these articles, it has not been shown that these publications have a substantial national readership beyond Chinese language readership in the New York metropolitan area. There is no specific data regarding their volume of U.S. readership. Because the overwhelming majority of the U.S. population does not read or comprehend Chinese, it has not been shown that an article appearing in such publications constitutes published material in the “major media.” Nor is there any evidence showing that the petitioner was the primary subject of sustained national media attention in China.

*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.*

In his October 30, 2002 letter accompanying the petition, counsel states that the petitioner “has been invited to work as a judge in China National Folk Dance Competitions in 1998 and 1999.”

The director’s decision stated: “There is no evidence in the file to indicate that [the petitioner] has acted as a judge of others who perform in the field of Chinese dance.” We concur with the director’s finding.

On appeal, counsel argues that the petitioner submitted “certificates indicating that she served as a judge in the China National Folk Dance Festival in 1998 and 1999,” but the initial evidence and the appellate submission did not include any such certificates. There is no evidence of the petitioner’s participation as a judge at this festival. Without documentary evidence to support counsel’s claim, his assertions will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena* at 533, 534; *Matter of Laureano* at 1; *Matter of Ramirez-Sanchez* at 503, 506.

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<sup>2</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual’s reputation outside of that county.

<sup>3</sup> All of the articles relate to local community events that occurred in New York. The majority of these articles mention cultural performances (which included the petitioner) for New York City schoolchildren and community college students.

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

The AAO has 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 dancer "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.

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

The petitioner submitted event programs and photographs from her various performances as a member of a dance group. This criterion, however, calls for commercial success in the form of "sales" or "receipts"; simply documenting the petitioner's participation cannot meet the plain wording of the regulation. The record contains no evidence of documented "sales" or "receipts" to showing that the petitioner's performances as a leading or principal performer drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

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

On appeal, the petitioner submitted a letter indicating that the petitioner earns \$30,000 per year as a dancer and dance instructor at the New York Chinese Cultural Center. The petitioner, however, offers no basis for comparison to show that this salary is significantly high in relation to other professional dancers in the United States.

Beyond documentation pertaining to the above regulatory criteria, the petitioner submitted several letters of support. Two of the letters are from individuals from the Mongolian Dance Association of China, who have instructed or worked with the petitioner. The remaining letters are from individuals from organizations or schools based in New York. These letters are not first-hand evidence that the petitioner has earned acclaim outside of New York or her affiliated organizations. If the petitioner's reputation is primarily limited to New York City, then she has not achieved national or international acclaim. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

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. The petitioner in this case has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as a dancer 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 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 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.