

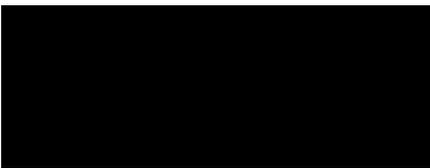
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U.S. Citizenship  
and Immigration  
Services

B2



FILE: [REDACTED]  
EAC 02 142 52469

Office: VERMONT SERVICE CENTER

Date: MAR 24 2008

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:

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*

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 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 Chinese Opera Artist. 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.<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.*

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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 petitioner submitted a 2002 citation from the City Council of New York; a 2001 certificate as an "Outstanding Artist of Chinese Traditional Theater" from his own agent; a 1999 award as a performer and educator from the Chinese Theater Workshop; the 1991 Excellent Award of Performing at the International Kite Invited Chinese Artists of Beijing Opera Competition; the 1990 Second Prize at Copper and Opera Performing Competition; the 1989 Excellent Performing Award of Peking Opera at the Dalian City Constructing and Drama and Opera Performing Competition; the 1987 Excellent Screen Award at the National Middle and Young Artists of Peking Opera Performing TV Competition and the 1986 First Prize of Beijing Opera Performing at the Liaoning Provincial 2<sup>nd</sup> Artistic Festival. Ting Zhengyun, a professor at the China Drama College, asserts that the petitioner's 1987 award "was the highest artistic career achievement honor of [the] Chinese Peking opera performing circle to the opera artists in China."

The director concluded that the regional awards could not serve to meet this criterion and that the record lacked evidence regarding the competitors at these competitions and the criteria used to select awardees.

On appeal, the petitioner submitted evidence regarding his 1987 award. In a letter with no seal, Shi Hongtou of the Chinese National Young Artists of Peking Opera TV Competition Organization Committee asserts that the competition was jointly sponsored by his committee and the Ministry of Culture. Mr. Hongtou further asserts that competitors compete in initial, semi final, and final rounds. A sealed letter from the Qingdao City Peking Opera Theater implies that this award resulted in a salary increase, a bonus and large apartment assignment.

The evidence is still not persuasive. The record lacks more specific information, such as the number of competitors and number and level of awards. Moreover, it can be expected that nationally recognized award competitions generate national press coverage. The record contains no major press coverage of the competition for 1987 or any other year. Regardless, the award was issued in 1987, 15 years prior to the filing date of the petition. Thus, even if we were to accept the award as nationally recognized, which we do not, it would not be indicative of sustained acclaim as of the date of filing.

The remaining awards are regional and local in nature, including a citation from the petitioner's own agent. These awards cannot serve to meet this criterion.

*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 director concluded, without discussion, that the petitioner had not established that he meets this criterion. We find further discussion is warranted. The petitioner submitted evidence of appointment and invitations to lecture as evidence to meet this criterion. A position within an opera troupe or a speaking engagement is not a membership. As such, this evidence does not relate to this criterion but will be considered below as to whether it demonstrates a leading or critical role for an organization with a distinguished reputation. The petitioner also submitted his membership certificate for the China Dalian Dramatists Association. The petitioner, however, did not submit the bylaws or other official documentation containing the membership requirements for this association. The absence of such documentation precludes us from considering whether this association requires outstanding achievements of its members. Thus, the petitioner has not established that he meets 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 submitted reviews of his performances in Chinese-language U.S. newspapers and the *Sacramento Bee*. In addition, [REDACTED] reporter and program host for Chinese American Voice, Inc., asserts that a January 21, 2002 interview with the petitioner "would lively [sic] broadcast to the audiences nationwide in the United States." This letter is ambiguous as to whether the interview had already been broadcast as of the filing date two months later.

The director concluded that the media coverage had a limited regional readership and did not constitute "major media." In response, the petitioner characterizes the *Sacramento Bee* as "high profile" and asserts that the Chinese-language articles appeared in the "biggest newspaper in Chinese community such as *World Journal* this is circling widely and also in high profile across the United States." (Grammar as it appears in original.)

The *Sacramento Bee* is a city paper with no significant national distribution. We cannot consider a review of the petitioner's performance in that paper to be published material about the petitioner in major media. The petitioner has provided no evidence of the circulation of any of the Chinese-language publications. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-194 (Reg. Comm. 1972), broadened in *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) and *Matter of Ho*, 22 I&N Dec. 206, 211 (Comm. 1998). Moreover, this office has consistently held that, in general, articles that appear in a language that the majority of the population cannot comprehend is not major media coverage indicative of national or international acclaim. In light of the above, 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 did not address this criterion specifically. The petitioner submitted letters from his fellow performers, audience members and those who have sponsored his workshops and performances. They all attest to his skill and expertise in Chinese opera generally. Some of the references attest to the petitioner's ability to present Chinese opera in a manner that is more accessible to U.S. audiences. Specifically, [REDACTED] of the [REDACTED] Center in Flushing, New York, asserts that the petitioner "re-edited the Chinese Traditional Peking Opera into the quick performing speed, short story to meet the taste of the American audiences that received the warm welcome from the American audiences." (Grammar as appears in original.) [REDACTED] asserts that his company appointed the petitioner "as the Artistic general monitor, director and re-editor for our [up]coming opera performances." Other references explain that the petitioner translated the speech into English while keeping the singing in Chinese. The record contains no evidence that this type of presentation has influenced Chinese Opera as a whole.

In response to the director's request for additional evidence, the petitioner submitted a letter purportedly from [REDACTED] the Peking Opera Music Director for "Farewell My Concubine." The letter is not on letterhead and does not include any contact information whereby we could verify this letter, such as an address or phone number. Regardless, the letter simply enumerates the petitioner's awards and other evidence in the record with little explanation as to the significance of the evidence. The letter then attests to the author's favorable opinion of the petitioner's talent.

On appeal, the petitioner submitted a letter from Martin Golden, a New York State Senator for the 22<sup>nd</sup> District. While Senator Golden attests to the petitioner's contributions to the community, he does not explain how the petitioner's free entertainment to the community represents a contribution of major significance to the field of Chinese Opera as a whole. In fact, Senator Golden provides no examples of the petitioner's national or international acclaim. For the reasons stated above, the petitioner has not established that he meets this criterion.

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

The petitioner has not claimed to meet this criterion and the director failed to address it. Given the evidence that relates to the petitioner's various roles for various troupes, we find that the evidence bears mention.

The petitioner submitted an appointment letter signed by his partner and agent [REDACTED] confirming his position as "the national and international artists on worrier and old man role of Peking Opera as Operatic Director, Artistic Consultant and First-rank Artist by Strange Candy for the coming Peking Opera presentation for three years from January 1, 2002 to December 31, 2004." Binghua Gong appointed the petitioner as "guest artistic general monitor to be responsible for all re-editing, directing and preparing all coming performances" for an art center in Flushing, New York bearing the petitioner's name. On January 11, 2002, the petitioner was invited to serve as the Director of Beijing Opera Troupe affiliated with the Clinton Culture Association in Flushing, New York. The record does not establish whether the petitioner had accepted this role prior to the filing date two months later. On December 1, 1994, the Qingdao Peking Opera Theater appointed the petitioner as a National 1<sup>st</sup> Grade Artist from January 1995 to January 1996. Ni Shiqi, the president of this opera company, asserts that the petitioner was a leading artist and led the company on tours all over China.

The petitioner also performed at the Brooklyn Public Library, Express Media Inc.'s Chinese New Year party at Harmony Restaurant, the Flushing Library, the Brooklyn Children's Museum, Suffolk County Community College, The State University of New Jersey at Rutgers and New York University (NYU). The petitioner spoke about Beijing Opera and face painting at some of these events. The invitation to NYU was due to the fact that the petitioner's partner and agent was a student there.

Not every cultural performer who appears at a local cultural festival plays a leading or critical role for the organization that sponsored the festival. Thus, we cannot conclude that the petitioner played a leading or critical role for the universities, companies and libraries that sponsored his performances. While the petitioner may have played a leading or critical role for various opera troupes, the record contains no evidence that any of those troupes enjoy a distinguished reputation nationally. For example, there is no evidence that these troupes have received any media coverage other than reviews of their performances by local papers covering the location where the performances occurred. For the above reasons, the petitioner has not established that he meets this criterion.

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

The petitioner did not initially claim to meet this criterion. In both the director's request for additional evidence and in her final decision, she implies that this criterion carries more weight than other criteria. We withdraw

any such inference. Nothing in the regulations requires a petitioner to meet any specific criterion in order to establish eligibility. That said, we note that the following criterion, commercial success in the performing arts pursuant to 8 C.F.R. § 204.5(h)(3)(x), directly relates to the petitioner's occupation. While failing to meet a criterion so specifically designed for one's occupation does not preclude eligibility, an alien who lacks any commercial success bears a heavy burden in demonstrating national or international acclaim as a performing artist.

In response to the director's request for evidence to meet this criterion, the petitioner submitted receipts from California State University, Sacramento, for payment to Strange Candy. These pay stubs reflect the following payments:

September 30, 2002	\$1,600
October 16, 2002	\$300
December 17, 2002	\$500

The petitioner also submitted a contract between [REDACTED] for a performance on January 4, 2003 for \$3,535. Another contract between Strange Candy and Doublass Activities Board reflects compensation of \$1,547 for a three-hour performance on November 19, 2002. A final contract for a 15-minute performance by [REDACTED] on February 19, 2003 at the Pratt Institute reflects compensation of \$800. [REDACTED] President and Cofounder of Strange Candy, writes:

This letter is intended to make clear that all references to StrangeCandy contained in contracts and letters, refer to [the petitioner]. Fees paid to StrangeCandy and contracts signed by me on behalf of StrangeCandy are done so as the agent of [the petitioner]. He is the only paid actor of StrangeCandy and the performances are engaged based on the understanding that he will appear. Money received by StrangeCandy is earned by him alone.

The director discounted [REDACTED] testimony based on her affiliation with the petitioner. Regardless, the record contains no evidence that the above remuneration is comparable with the remuneration received by the most acclaimed performing artists in the United States. Thus, the petitioner has not established that he meets this 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 a videotape of his performances as evidence to meet this criterion. The tape does not appear to be professionally filmed, edited or packaged and there is no evidence that it was ever available for sale. Regardless, the petitioner did not submit sales data for this video or box office receipts for the performances depicted on the tape. As such, the petitioner has not submitted the type of evidence required by this criterion. We must agree with the director that the fliers, video and photographs suggest that the petitioner has performed in libraries and at local cultural festivals sponsored by universities, private employers, and a New York City council district. One of the petitioner's references, while attesting to his enjoyment of the petitioner's performance, characterizes it as a "small theatrical production." While the petitioner references plans to perform at major venues in New York such as theaters on Broadway, the record contains no evidence that he has already reached that level of commercial success.

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 Chinese Opera performer 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 Chinese Opera performer, 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.