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FILE: [REDACTED]
EAC 02 296 53473

Office: VERMONT SERVICE CENTER

Date: NOV 07 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:

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

This petition, filed on September 27, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a 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, 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.

The petitioner submitted the following:

1. "Certificate of Award" stating that the petitioner "was granted the 'Excellent Hua-Dan Award' in the 1998 National Peking Opera Performer Contest"
2. "Certificate of Award" stating that the petitioner "was granted the 'Opera New Star Award' in the 1998 National Traditional Opera Performance Grand Contest"
3. Certificate acknowledging the petitioner's "contribution in the Third National Peking Opera and Local Opera Performance Competition" (1995)
4. "Certificate of Honor" stating that the petitioner "participated in the Second 'Peach and Plum Cup' Chinese Dance Competition among National Art Schools and Colleges"

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 3 and 4, 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 the competitions.

In regard to items 1 through 4, there is no evidence of publicity surrounding the petitioner's awards or evidence showing that they enjoy a significant level of recognition. Simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. Because the statute requires "extensive documentation" of sustained national or international acclaim, the petitioner must submit contemporaneous evidence showing that her awards enjoy significant national or international stature.¹ In this case, the record contains no documentation from the awarding entities or print media to establish that the petitioner's awards are nationally 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

¹ For example, large-scale competitions typically issue event programs listing the order of events 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 events. The petitioner, however, has provided no evidence of the official comprehensive results for the competitions in which she received awards.

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" and the Association of Chinese Artists. The record, however, includes no evidence of the bylaws or the official admission requirements for these associations indicating that they require outstanding achievement in the performing arts. Assertions from the petitioner regarding the exclusive nature of their membership requirements are not adequate to satisfy the "extensive documentation" requirement for this classification set forth at section 203(b)(1)(A)(i) of the Act. According to the translation accompanying the petitioner's membership card from the Association of Chinese Artists, her membership grade is listed as "Second-Class Performer of State." The petitioner does not explain how being a "Second-Class Performer" indicates that she is one of that small percentage who have risen to the very top of the performing arts field. We further note that the petitioner's "Working Unit," the [REDACTED], is a local organization rather than a national or international organization.

We find no evidence demonstrating that admission to membership in the preceding organizations 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.

In response to the director's request for evidence, the petitioner submitted blurred photographs of what are alleged to be her stage performances. There is no evidence demonstrating that the petitioner appears in these photographs. Nevertheless, 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 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 that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a one-sentence "Notarial [sic] Certificate" stating that she "worked as a professional Peking Opera actress in Shanghai Peking Opera Troupe from July 1992 to June 1998." This certificate was issued by [REDACTED] a Notary in the Shanghai Xuhui Notary Public Office, rather than by an official of the Shanghai Peking Opera Troupe. The record includes no evidence to support [REDACTED] assertion that the petitioner served as an actress with the Shanghai Peking Opera Troupe. Nor is there any evidence showing that this opera troupe has earned a distinguished reputation when compared to other Peking Opera troupes throughout China.

In response to the director's request for evidence, the petitioner submitted a letter (dated May 28, 2003) stating:

I was once appointed vice manager of the External Performance Company of Shanghai Peking Opera Troupe. The company had handed over considerable profit to the troupe. I led the performance company of the troupe to perform in tour shows and exchange shows to various places all over China. Our shows were beloved by numerous traditional opera fans.

The record includes no evidence to support the petitioner's assertion that she served as the vice manager of the External Performance Company of the Shanghai Peking Opera Troupe. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In this case, the petitioner has not established that she has performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

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 September 4, 2001, but there is no evidence showing that she has been involved in any work related to Peking Opera performances during the last four 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 27, 2002 to September 30, 2002 (SRC 02 021 50860, filed by the Taishan International Culture 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.

COEXM:ELINGELBACH

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