



U.S. Citizenship
and Immigration
Services

B2

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: OCT 04 2006

EAC 04 038 52765

IN RE:

Petitioner:

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

This petition, filed on November 24, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a Peking Opera actor. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1999. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a performer in this country.

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 certificates and accompanying English language translations indicating that he received the following:

1. "Award of Perfect Wu-Sheng Performer in '1991 Great Competition of TV Show of National Young and Middle-age Peking Opera Performers'"
2. "Award of Wu-Sheng in 'The 2nd Great Competition in TV Show of Peking Opera Art in Northeast of China'" (1992)
3. "Second Grade Award in Wu-Sheng Series of Peking Opera during the Great Competition of China Opera Art Performance; Stage Art Series" (1997)
4. Certificate of Honor for "Special Grade in the professional team of Great Award Competition in TV Show of '8th Pear Flower Cup of National Young Peking Opera Performers'" (1998)

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 and 4, there is no indication that the petitioner faced competition from throughout his field, rather than his approximate age group within the field. A youth award offers no meaningful comparison between the petitioner and established performing arts professionals. Item 2 reflects regional recognition rather than national or international recognition. In regard to item 4, the wording of the translation suggests that this was a team award rather than an individual award making the petitioner's level of contribution difficult to ascertain.

The record contains 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 his 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.

¹ For example, large-scale competitions typically issue event programs listing the order of events, the name of each specific event, and the names of the participating performers. 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 comprehensive results for the competitions in which he received awards.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant performing arts competitions subsequent to 1998. The absence of such awards suggests that the petitioner has not sustained whatever acclaim he may have earned in China.

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.

In response to the director's request for evidence, the petitioner submitted a certificate verifying his membership in the China Artists' Association (CAA). According to the translation accompanying this certificate, the petitioner's grade of membership is listed as "Second Grade Expert." The petitioner does not explain how being a "Second Grade Expert" indicates that he is one of that small percentage who have risen to the very top of the performing arts field. The record contains no evidence of the bylaws or official membership requirements of the CAA to demonstrate that admission to membership requires outstanding achievement in the performing arts or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

The petitioner also submitted what are alleged to be photos of his stage performances, but these photos do not satisfy any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In this case, the petitioner has failed to demonstrate that he 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.

It should be noted that the record contains a copy of the petitioner's passport, issued in Tianjin by the Ministry of Foreign Affairs of the People's Republic of China on September 3, 1999. Under "Profession," the passport identifies the petitioner as a "Manager," despite the petitioner's claim that he is nationally recognized in China as an opera performer. The petitioner has not resolved this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

For the reasons discussed above, the record is ambiguous regarding the petitioner's acclaim throughout his native China, and there is no evidence showing that the petitioner has sustained whatever acclaim he earned in China since his arrival in the United States in 1999.

Review of the record does not establish that the petitioner has distinguished himself as a 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.