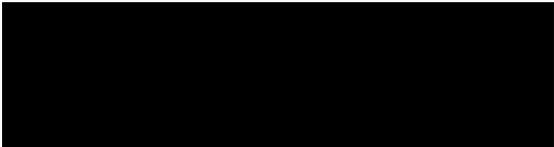




U.S. Citizenship  
and Immigration  
Services

B2

FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 04 2005

EAC 04 024 51128

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 (AAO) 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 1, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese 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 August 2001. 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 him 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 "First-Class Excellent Young Singer (Duet) of Professional Artistic Organizations of Liaoning Province" (1981)
2. "Peking Opera Xiao Sheng Award" in the First Art Festival of Shenyang City (1984)
3. "Second Place Prize of Wu Sheng" in the 1986 Traditional Opera Grand Contest of Shenyang

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.

Items 1, 2, and 3 above reflect local or provincial recognition rather than national or international recognition. 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. In addition to these deficiencies, the record contains no evidence showing that the petitioner has won any significant performing arts awards subsequent to 1986. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in China during the 1980's.

*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 he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his 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 he "worked as a professional Peking Opera director in Peking Opera Troupe of Shenyang City from September 1985 to January 1998." This certificate was issued by [REDACTED] a Notary in the Liaoyang Notary Public Office, rather than by an official of the Peking Opera Troupe of Shenyang City. The record includes no evidence to support [REDACTED] assertion that the petitioner served as the director of the Peking Opera Troupe of Shenyang City. Nor is there any evidence showing that this opera troupe has earned a distinguished reputation when compared to other Peking Opera troupes throughout China. We find the petitioner has not established that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In response to the director's request for evidence, the petitioner submitted a letter allegedly issued by [REDACTED] former Vice Chairman of the China Dramatist Association. This letter has no address, phone number, or any other information through which this individual may be contacted. [REDACTED] discusses a few of the petitioner's stage performances, but his letter fails to demonstrate the petitioner's sustained national or international acclaim. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate that he 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 26, 2001, but there is no evidence showing that the petitioner 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 him to work in the United States as an artist/entertainer from February 26, 2002 to February 17, 2003 (LIN 02 114 53147, filed by Northeast Cultural Exchange Center). Astonishingly, the petitioner has submitted no evidence of his work as a performer even during that authorized period. Based on the lack of evidence that the petitioner has been working in his area of expertise, he has not established the *sustained* national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

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 2001.

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.