



U.S. Citizenship
and Immigration
Services

Information for data released by
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FILE: [redacted]
EAC 04 059 50249

Office: VERMONT SERVICE CENTER

Date: OCT 04 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 Plunose

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 December 24, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Yang-Qin Performer."

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 a "Certificate of Honor" (dated May 1995) recognizing his "contribution in the Third National Competition of Yan-Qing." The petitioner offers no evidence showing that this certificate is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of his participation in the competition.

The petitioner submitted a "Certificate of Culture and Art Award of Hebei Province" (dated January 1995) indicating that he received a "first grade performance award for his Yang-Qin Solo" at the "First Joint Show of Secondary Art School in Hebei Province." This award reflects provincial recognition rather than national or international recognition.

The petitioner submitted a certificate (dated December 1997) indicating that he received a "Golden Bell Prize of Chinese Music" from the Chinese Musicians Association. The record contains no evidence of publicity surrounding this prize or evidence showing that it enjoys a significant level of recognition

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 this case, there is no documentation from the awarding entities or print media to establish that the petitioner's awards are nationally recognized performing arts awards. Furthermore, the record contains no evidence showing that the petitioner has won any significant performing arts awards subsequent to 1997. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in China during the 1990's.

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.

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

In response to the director's request for evidence, the petitioner submitted two blurred photocopies of what he alleges is the cover of one of his compact discs. However, the mere fact that the petitioner has issued a recording of his work does not demonstrate that the recording is commercially successful. The plain wording of this criterion requires the petitioner to submit evidence of his commercial success in the form of "sales" of compact discs or cassettes. In this case, the petitioner has not shown that his compact disc has enjoyed a high sales volume in China or the United States. To satisfy this criterion, the petitioner must establish that his performances have consistently drawn larger audiences and/or higher compact disc sales than most others in his field, at the national or international level. The record includes no such evidence.

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).

On appeal, the petitioner submits a letter allegedly issued by [REDACTED] Vice Director of the [REDACTED]. This letter has no address, phone number, or any other information through which this individual may be contacted. [REDACTED] describes the petitioner as a skilled percussionist, but his letter fails to demonstrate the petitioner's sustained national or international acclaim. A musician with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

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 Shenyang by the Ministry of Foreign Affairs of the People's Republic of China on March 15, 2000. Under "Profession," the passport identifies the petitioner as a "Manager," despite the petitioner's claim that he is nationally recognized in China as a Yang-Qin 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 2002.

Review of the record does not establish that the petitioner has distinguished himself as a musician 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.