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FILE: [REDACTED]  
EAC 03 260 54999

Office: VERMONT SERVICE CENTER

Date: OCT 11 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 that she 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on September 17, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a Peking Opera actress. 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 2000. 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, internationally 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 from the Culture Bureau of Hubei Province stating that the petitioner "was awarded and encouraged for her excellent and good performance in 1998."
2. "Certificate of Award" indicating that the petitioner "won the Third Place Award of Singing in Traditional Opera Group in 1998 National Vocal Music New Performer and New Creation Contest"
3. "Certificate of Honor" indicating that the petitioner "won the Special Award Nomination in Professional Group in the Eighth 'Big Red Eagle' Cup National Television Grand Prize Contest of Young Peking Opera Performers" (1998)
4. "Certificate of Honor" acknowledging the petitioner's participation "in the rehearsal and performance of Peking Opera 'Spring in Jade Hall' in the Joint Party of Chinese New Year [sic] Eve of 1999 of China Central Television"
5. "Certificate of Honor" for "First Grade Prize in 1996 National Opera Singing Competition"
6. "Certificate of Honor" for "First Grade Prize in 1997 National Folk Songs Grand Prize Competition."

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.

Item 1 reflects provincial recognition rather than national or international recognition. In regard to item 4, there is no evidence showing that this certificate is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner's participation in the event. In regard to items 1 through 6, 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.<sup>1</sup> 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.

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<sup>1</sup> 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 awards subsequent to 1999. The absence of such awards indicates that the petitioner has not sustained whatever acclaim she may have earned in China during the 1990's.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

On appeal, the petitioner submits evidence of her alleged authorship of an article in *Peking Opera Forum* entitled "Drum Chinese zither playing the stringed instrument." The record, however, contains no evidence showing that this article was actually published by the petitioner or evidence of its significant national or international distribution. Nor is there supporting evidence showing that the petitioner's article is viewed throughout her field as significantly influential.

*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 three blurred photographs of what are alleged to be her stage performances. The petitioner also submitted a note from the Program Director of the Queens County Living Residence thanking the petitioner for providing a performance for its residents. The petitioner also provided a "Certificate of Appreciation" acknowledging her performance at another local event.

This particular criterion, however, 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 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 documenting the petitioner's participation in a few performances cannot meet the plain wording of the regulation. The record contains 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.

On appeal, the petitioner submits 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, the petitioner has failed to demonstrate that she 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.

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.