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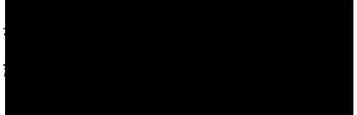
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EAC 03 266 54683

Office: VERMONT SERVICE CENTER

Date: OCT 11 2005

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.

Mari Johnson

S 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 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 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 September 29, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a dancer. 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 this petition's filing date, it is certainly 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 national reputation as a dancer 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 a certificate from 1997 stating that he “won the First Prize of Youth Group in the Second National ‘Peach and Plum Cup’ Dance Competition of Youth and Teenagers.” The petitioner’s “Youth Group” prize offers no meaningful comparison between the petitioner and the most experienced and practiced dancers in the field. There is no indication that the petitioner faced competition from throughout his entire field, rather than only his approximate age group within that field. Such an award is not an indication that an individual has reached the “very top of the field of endeavor.”

The petitioner also submitted the English language translation of a “Certificate of Performance” issued in 1991 by the “Organization Committee of ’91 Chinese Tourist Art Festival and Guangdong Carnival,” but the petitioner did not submit his original certificate. Nevertheless, there is no evidence showing that this certificate is a nationally or internationally recognized award, rather than simply an acknowledgment of the petitioner’s participation in the ’91 Chinese Tourist Art Festival and Guangdong Carnival.

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 two translations submitted by the petitioner were not certified as required by the regulation.

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. Nor is there evidence showing that the petitioner has won any significant awards subsequent to 1997. 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, 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 provincial level. Therefore, membership in an association that evaluates its membership applications at the local or provincial 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 indicating that he is a member of The World Association of Beauty Culture. The record, however, does not include the membership bylaws or official admission requirements for this association. There is no evidence showing that admission to membership in this association required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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

In response to the director's request for evidence, the petitioner submitted what he alleges is evidence of his authorship of an article in *Beijing Youth Daily*. The petitioner provided a "Translation Copy" of the article, but he did not submit the original article. There is no evidence showing that this article was actually published under the petitioner's name or evidence of its significant national or international distribution. Nor is there supporting evidence showing that the article is viewed throughout the petitioner's field as significantly influential.

On appeal, the petitioner submits blurred photocopies of what are alleged to be four photographs 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.

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



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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.