



U.S. Citizenship
and Immigration
Services

B2



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: [REDACTED]

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.

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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration; including a notice advising the petitioner of derogatory information.

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 did not contest that the petitioner had the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. Rather, the director concluded that the petitioner was not seeking to continue working in his area of expertise.

While we conclude that the director's basis of denial was incorrect, the matter must be remanded to the director for further action based on derogatory information obtained by this office and inconsistencies in the file discussed below.

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.

The evidence purporting to demonstrate the petitioner's national acclaim mostly relates to his accomplishments as a Chinese Opera performer. On the petition, the petitioner indicated that he sought to work as an "Opera Actor, Art Director." The nontechnical description of the job includes the following duties: "to perform, to create program, to direct rehearsals and to train students." A letter from WSD Culture and Entertainment (WSD) offers the petitioner a job as "Art Director, Instructor and Peking Opera Actor" at a salary of \$500 per week plus \$200 for each performance. These terms are confirmed by a contract between the petitioner and WSD. On December 4, 2003, the director requested additional documentation, questioning whether the petitioner sought to continue working in his area of expertise. In response, the petitioner indicated that he would perform opera in addition to directing rehearsals and training young performers.

The director determined that the petitioner had not submitted "evidence clearly relating to the petitioner's accomplishments as an Art Director or Instructor." The director then concluded:

It is noted that nearly all positions have secondary duties or responsibilities. However, as the petitioner and his proposed employer have clearly detailed the petitioner's art direction and instruction duties, these cannot be considered as merely secondary or minor responsibilities. Rather, they appear to be significant duties different from the petitioner's area of extraordinary ability, and which would take away from the petitioner's duties therein.

We agree that an alien must demonstrate that he is coming to the United States to continue working in his area of expertise, that instruction is not the same as performing, and that the evidence of the petitioner's experience as an art director and instructor does not rise to the level of extraordinary ability. That said, we cannot agree with the director's conclusion. WSD's job offer constitutes a single job offer that includes performing opera as a specified duty. The remaining duties, while problematic if they were the petitioner's only duties, are related to his claimed area of expertise. Thus, we find the job offer to be a credible means for the petitioner to continue in his area of claimed expertise.

Nevertheless, the director's conclusion that the petitioner has established sustained national acclaim is questionable. 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 CIS regulation at 8 C.F.R. § 204.5(h)(3) as follows.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a Chinese opera 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, quoted above, 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. Initially, the petitioner submitted:

As evidence to meet 8 C.F.R. § 204.5(h)(3)(i), Chinese¹ honors and awards, issued between November 1993 and 2001;

As evidence to meet 8 C.F.R. § 204.5(h)(3)(ii), a letter from the Vice Chairman of the National Opera Artists Association indicating that membership requires a provincial or national award and the petitioner's membership card reflecting admission on June 2, 1993;

As evidence to meet 8 C.F.R. § 204.5(h)(3)(iii), 1996, 1997, and 1998 news clips in what appear to be local newspapers;

As evidence to meet 8 C.F.R. § 204.5(h)(3)(iv), appointment as a panel member for the Youth Peking Opera section at the 1998 China National Opera and Dance Competition;

As evidence to meet 8 C.F.R. § 204.5(h)(3)(viii), a September 2003 letter from the Preparation Committee of the Fifth World Arts Education Discussion Conference in Beijing advising that the petitioner's article, "[REDACTED]" would be read and printed at the conference; a 1998 appointment letter ordering the petitioner to "lead Shanghai Children Peking Opera Troupe" at the 3rd International Arts Festival Competition and a certificate recognizing the petitioner for leading the China Youth Vocal Delegation at the Sydney International Arts Festival Competition; and

As evidence to meet 8 C.F.R. § 204.5(h)(3)(ix), questionable letters from Walt Disney Entertainment, Brigham Young University, and Ogden City Department of Community Services (DCS). [REDACTED] manager of the Entertainment Department at Walt Disney Entertainment, who typed her name [REDACTED] asserts: "I hope this pay is the most high salary than we paid for our other entertainers." (Grammatical errors in original.) Linda Thomas, Director of Ogden City DCS, asserts: "This is to let you know that we pay you for \$250, and

¹ The petitioner also submitted a 2002 award from the Tung Ching Chinese Center for the Arts, Inc. in New York, with no evidence that this constitutes a national award.

each other performers for \$120.” (Grammatical errors in original.) We note that both letters are so fraught with these types of grammatical errors as to raise concern regarding their legitimacy.

On December 4, 2003, the director advised the petitioner of several concerns: that the record lacked evidence of the significance of the petitioner’s prizes, that membership in the National Opera Association of China requires only a provincial award, that the articles submitted appeared to have been published in local papers, that the petitioner had not established the significance of the competitions judged, that the petitioner had not established the reputation of the Children Peking Opera Troupe, and that the record lacked evidence that the petitioner had commanded a high salary or other significantly high remuneration for services in relation to others in the field.

In response, the petitioner submitted a letter from [REDACTED] Director of the Data Department of the China National Opera Association. [REDACTED] discusses the prestige of the awards won by the petitioner and the competition judged by the petitioner in 1998. [REDACTED] further asserts that the China National Opera Association requires members to be “the top winner at both major national competition and provincial competition that they should be not only the national competition winner, but also provincial competitions top winner.” The petitioner also submitted a January 2001 newspaper article in the *People’s Daily* reporting the results of the list of 10 Extraordinary Artists of China, including the petitioner based on his 2000 award at the Shanghai international competition. Finally, the petitioner submitted a letter from [REDACTED] general manager for Li Fa Culture Distribution Station in Shengyang City asserting that the petitioner’s compact disc sold 80,000 “pieces.”

Based on the questionable features in the letter from [REDACTED] this office contacted her and faxed her a copy of the letter she allegedly wrote. [REDACTED] responded in writing. While she acknowledged that the copied signature was hers, she asserted that the letter is a “forgery and definitely was *not* written by me.” (Emphasis in original.) [REDACTED] provided a list of 14 anomalies in the letter, most notably the misspelling of her name below her signature and the use of poor English grammar. She also indicated that her department is not the “Entertainment Department,” that her title on the alleged letter is incorrect, and that she does not end letters with “warm regards.” 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Thus, the fact that we have verified this letter as fraudulent casts doubts on the remaining documents. Nevertheless, 8 C.F.R. § 103.2(b)(16)(i) requires that Citizenship and Immigration Services (CIS) advise the petitioner of any derogatory information of which he is unaware and offer an opportunity to rebut the information. As such, we will remand this matter to the director for the purpose of advising the petitioner of this derogatory information and providing an opportunity to rebut it.

Moreover, we note that both the assertion that the National Opera Association requires at least a provincial award and the assertion that the association requires both a provincial and a national award conflict with the record. As stated above, the petitioner received membership in June 1993, while he received his first award several months later, in November 1993. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-92. Thus, the director should consider whether this inconsistency reduces the evidentiary value of the petitioner’s membership.

The director should also evaluate whether the petitioner’s appearance on the list of honorees in the *People’s*

Daily constitutes published material about the petitioner himself. Further, the director should evaluate whether the record suggests that the petitioner's salary is significantly high even in comparison with the most experienced and acclaimed opera performers nationwide. Finally, the director should evaluate whether the petitioner's accomplishments, the most significant of which occurred more than three years prior to the date of filing, are indicative of *sustained* acclaim as of the date of filing.

The matter is remanded for further action consistent with the above concerns.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing, including a notice advising the petitioner of derogatory evidence and entry of a new decision, which, *regardless of outcome*, is to be certified to the Administrative Appeals Office for review.