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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B2

[Redacted]

FILE: [Redacted]  
SRC 05 011 51830

Office: TEXAS SERVICE CENTER Date: OCT 20 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, Texas 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. 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 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 October 15, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Peking Opera Performer." The petition was unaccompanied by supporting evidence. On November 19, 2004, the director denied the petition, finding that the petitioner had not established eligibility pursuant to section 203(b)(1)(A) of the Act.

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. On appeal, 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 submits Certificates of Honor and accompanying English language translations indicating that he received the following:

1. "First Grade Prize in 1994 National Traditional Opera Performance Competition"
2. "Outstanding Prize in Wu Sheng series in 1996 National Drama Exchange Performance"
3. "Second Grade Prize in Wu Sheng group in 1989 Shan Dong Province Peking Opera Performers Competition"
4. "Outstanding Wu Sheng" award "in the Second Northeast Peking Opera TV Grand Prize Competition" (1992)

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 3 and 4 are reflective of provincial or regional recognition, rather than national or international recognition. In regard to items 1 through 4, 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 his 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 prizes are nationally recognized performing arts 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 1996. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he 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.*

The petitioner submits evidence of his alleged authorship of an article in *Dazhonghua Yingyi* entitled "History of Peking Opera." The record, however, contains 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

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<sup>1</sup> For example, large-scale competitions typically issue event programs listing the order of events 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.

supporting evidence showing that the petitioner's article is viewed throughout his field as significantly influential.

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

The petitioner submits three photographs of what are alleged to be his Peking Opera performances.<sup>2</sup> The petitioner has listed a dollar amount under each of these photographs, asserting that the dollar amount listed represents the box office revenue for the particular production shown in each photograph. The record, however, contains no evidence to support the petitioner's assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). There is no evidence (such as financial records) showing that the productions shown in the petitioner's photographs actually earned the dollar amounts appearing under the photographs. The plain wording of this criterion calls for commercial success in the form of "sales" or "receipts"; simply asserting that one's alleged productions grossed varying revenue amounts cannot satisfy criterion. To satisfy this criterion, the petitioner must establish that his performances have consistently drawn larger audiences and/or higher box office grosses than most others in his field, at the national or international level. The record includes no such evidence.

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 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 the 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

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<sup>2</sup> While we cannot state with certainty that none of these photographs show the petitioner, we note that a recent photograph of the petitioner attached to his Form I-485, Application to Register Permanent Residence of Adjust Status, bears little resemblance to any of the men in the Peking Opera photographs submitted on appeal.

(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.