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U.S. Citizenship  
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Services

B2



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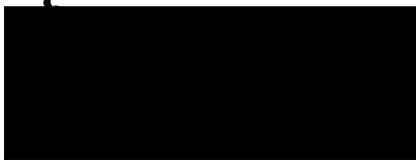
Office: VERMONT SERVICE CENTER

Date: OCT 31 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:



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.

*Maia 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. 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 January 2, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an acrobat. 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 October 1998. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than four years), 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 an acrobat 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 letter from Agnes Ho, Executive Director, [REDACTED] Chinese Center for the Arts, Inc., New York, stating that her company presented the petitioner with "the award of 'The International Acrobatic Master,' on April 28, 2002, for his extraordinary ability in the performing art of acrobatics." This award, however, is reflective of local or institutional recognition, rather than national or international recognition.

The petitioner also submitted a letter from Bao An Cao, Executive Director, CBA Culture & Arts Center, Inc., New York, stating: "On August 1, 2002, our company honored [the petitioner] with an International Gold Award for what he has achieved in his field." We note, however, that the petitioner has worked for CBA Culture & Arts Center, Inc. since coming to the U.S. in 1998. An award from one's immediate employer is reflective of institutional recognition rather than national or international recognition.

The petitioner also submitted a letter from [REDACTED] President of the Tianjin Acrobatics Troupe, stating: "In 1987, [the petitioner] won the 'Silver Lion' award in the 2<sup>nd</sup> China National Acrobatics Competition. In 1988, he won the 'Silver Crown' award and 'France International Art Development Association' award." The record, however, includes no first-hand evidence of these awards. Furthermore, there is no evidence of publicity surrounding the awards or evidence showing that they enjoy a significant level of recognition. Simply receiving an award with the word "national" or "international" 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 awards 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 in China subsequent to 1987. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in China during the 1980'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.*

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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.

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.

The letter from [REDACTED] states: "In 1987, the petitioner was accepted as a member of China Acrobatics Artists Association and China Tianjin Acrobatics Artists Association." The record, however, includes no first-hand evidence of the petitioner's active membership status in these associations. Furthermore, there is no evidence of the bylaws or official membership requirements for these associations demonstrating that admission to membership requires outstanding achievement or that individuals are evaluated by national or international experts in consideration of their admission to membership.

*Published materials 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.*

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>2</sup>

The director's decision stated: "[The petitioner] . . . submitted a copy of the 1993 edition of Vol. 2, Literature and Art, 'Who's Who in Young Chinese,' which lists [the petitioner]." The director's decision notes that "hundreds, if not thousands of individuals have also been similarly recognized in the directory." Publications of this size, with such a limited portion devoted to the petitioner, appear to be more of a comprehensive directory than a special form of recognition limited to an elite few. We cannot conclude that the petitioner's limited entry into such a sizable tome would constitute qualifying published material about the petitioner and his work. Furthermore, the petitioner provides no quantitative evidence regarding the volume of distribution of this publication to establish that it qualifies as "major media."

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<sup>2</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

The petitioner also submitted a Chinese-language newspaper article dated March 14, 2001. Local media coverage of this kind is not evidence of national acclaim. There is no evidence showing that this newspaper has substantial national readership. Furthermore, the article was unaccompanied by a full English language translation as required by this criterion and the regulation at 8 C.F.R. § 103.2(b)(3). In this instance, there is no indication that the petitioner is the primary subject of the published material. If the petitioner's acrobatic talent is not the main subject of the article, then it fails to demonstrate his individual acclaim.

We find no evidence to demonstrate that the petitioner has earned sustained acclaim in the national media of the United States or China.

*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 specification for which classification is sought.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, serving as a judge for a national competition involving professional performers is of far greater probative value than serving as a judge for a local competition involving amateurs.

The director's decision stated:

[The petitioner] submitted certificates of appointment which note that [the petitioner] was appointed as a member of the "Huanghe Cup" judging committee for the Second Wuhan Acrobatics Festival in 1996, and a judge in the Second National "Xin Miao Cup" Acrobatics Contest in 1993. However, the record contains no evidence that the contestants that [the petitioner] judged were other professional acrobats.

We concur with the director's observation. There is no evidence showing the level of expertise of the contestants evaluated by the petitioner (i.e.- novice, amateur, or professional). Furthermore, we note the absence of published material or national publicity surrounding the petitioner's involvement at the events. We cannot ignore that the statute and regulations require "extensive documentation" of sustained national or international acclaim. Without evidence showing that the petitioner's activities at this festival involved evaluating professional performers at the national level, we cannot conclude he meets this criterion.

In addition to the above deficiencies, we note that the statute and regulations require the petitioner's acclaim to be sustained. Subsequent to 1996, there is no evidence showing that the petitioner has served as a performing arts judge.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner submitted evidence of his various acrobatic performances. 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 acrobat "displays" his 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 acrobatic performances are far more relevant to the "commercial successes in the performing arts" criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted a second letter from Bo An Cao (dated September 16, 2002) stating that the petitioner's "annual salary will be approximately \$40,000.00 per year." The record, however, includes no financial documentation (such as payroll records or income tax forms) showing the petitioner's actual earnings for any given period of time prior to the petition's filing date. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Further, the plain wording of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner earns a level of compensation that places him among the highest paid performing artists in the United States or China.

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

The petitioner submitted program booklets, correspondence, and photographs relating to his acrobatic performances. While this evidence shows that the performances took place, it does not establish commercial success. The plain wording of this criterion requires the petitioner to submit evidence of his commercial success in the form of "sales" or "receipts." As noted previously, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. To satisfy this criterion, the petitioner must establish that his performances have consistently drawn larger audiences and/or greater sales than most others in his field at the national or international level. In this case, there is no evidence of "sales" or "receipts" showing that the petitioner's performances as a leading or principal performer drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

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.

Beyond the regulatory criteria, the petitioner submitted several letters of support. The majority of these letters are from Chinese arts organizations based in New York. These letters indicate that the petitioner is a talented acrobatic performer, but they fall short of demonstrating his sustained national or international acclaim in the United States or China.

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.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.