



U.S. Citizenship
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Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **SEP 06 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.

for 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 that he 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 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 August 28, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese Peking Opera Actor." 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 1998. 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, 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 certificates and accompanying English language translations indicating that he received a Second Prize Award in the Second Northeast Peking Opera Artistic Television Grand Contest (1992) and an Excellent Performance Award in the Fourth Art Festival of Shenyang City (1994). The petitioner also claims to have received a Peking Opera Solo Singing Award in the Third Art Festival of Shenyang City in 1991, but the record contains no evidence of this award. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Because the preceding three awards are reflective of local or regional (rather than national or international) recognition, they do not constitute qualifying evidence under this criterion.

Also submitted were a certificate and accompanying translation indicating that the petitioner "participated in the performance and rehearsal" of "Hero's Farewell to Concubine" in China Central Television's "Joint Party of Chinese New Year's Eve of 1999." Another certificate and accompanying translation indicates that the petitioner participated in a benefit performance sponsored by various organizations in the Liaoning Province. The petitioner offers no evidence to show that these two certificates are nationally or internationally recognized awards, rather than simply an acknowledgment of his participation in the shows.

The petitioner also provided a certificate and accompanying translation stating that he "won the First Prize of Excellent Youth in the 1996 National Traditional Opera Exchange Show" sponsored by the Ministry of Culture.

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services 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.

The record contains no evidence of publicity surrounding the above competitions or evidence showing that the petitioner's awards enjoy significant recognition beyond the context of the event where they were presented. The level of recognition associated with the preceding certificates is not self-evident. Simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. The petitioner must provide evidence to establish that his awards enjoy significant national or international stature. In this case, the record contains no documentation from the awarding entities or print media to establish that the above certificates are nationally recognized performing arts awards.

On appeal, the petitioner submits a document entitled "Chinese Opera Plum Blossom Prize Regulation." This document does not appear relevant to the present case, however, because the petitioner has provided no evidence indicating that he is a "Plum Blossom Prize" recipient.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any performing arts awards subsequent to his arrival in the United States in 1998. The absence of such awards suggests that the petitioner has not sustained whatever acclaim he may have earned in China.

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 an article he authored in 2000 entitled "Clothes." The record, however, contains no evidence showing that this article was actually published or that it has been widely circulated. Nor is there any supporting evidence showing that the petitioner's article is viewed throughout the artistic community as significantly influential.

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

The petitioner submitted a "Peking Opera show brochure page" and an accompanying translation indicating that he performed in the Peking Opera play entitled "[REDACTED]". The brochure lists over thirty other performers in this play and does not single out the petitioner as playing a leading role. It is further noted that there is no evidence indicating that the performance took place at a nationally reputed venue.

The AAO has consistently found that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. Virtually every actor "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 stage performance in "Sha's Pond" will be further addressed under the next criterion.

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

The [REDACTED] brochure page is not prima facie evidence of extraordinary ability, because one need not be a top figure in the field in order to participate in a play. The regulation calls for commercial success in the form of "sales" or "receipts"; simply documenting the petitioner's participation in a single play cannot meet the plain wording of the regulation. The record contains no evidence of documented "sales" or "receipts" to show that 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 indicated that additional evidence would be submitted to the AAO thirty days. The appeal was filed on March 31, 2004. As of this date, more than six months later, the AAO has received nothing further.

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." Subsequent to his arrival in

1998, there is no evidence showing that the petitioner's primary occupation in the United States involves Peking Opera. For example, there is no documentation showing that the petitioner has regularly taken part in performances here in the United States.

For the reasons discussed above, the record is ambiguous regarding the petitioner's acclaim throughout his native China, and there is no evidence showing that the petitioner has sustained whatever acclaim he earned in China since his 1998 arrival in the United States. Nor has the petitioner adequately demonstrated that he will "continue work in the area of expertise."

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case 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 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.

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.