



U.S. Citizenship
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Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 06 2005

IN RE:

Petitioner:

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, 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 she 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 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on September 17, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese Peking Opera Actress." 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 January 11, 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 with accompanying English language translations indicating that she received the following awards:

1. "First Grade Award of Peking Opera Dan Role in Stage Art Group of Chinese Traditional Opera Performance Competition" (1997)
2. "Second Grade Award in National Traditional Opera, Stage Play and Opera Contest" (1995)
3. "Excellent Performance Award in 1987 National Young Artist of Peking Opera Grand Election Television Competition"
4. 1997 Plum Blossom Award of Chinese Traditional Opera
5. "First Grade Award of Outstanding Middle-age Artists in 1996 National Traditional Opera Exchange Show"
6. "Best Middle-age Artist" award in the Xin Hui Art Festival of Guang Dong province (1997)
7. "Best Hua Dan Award in the Fourth Art Festival of Shen Yang City" (1994)
8. "Second Grade Award in the Second Northeast Peking Opera Art Television Competition" (1992)
9. Flushing, New York 2002 Millennium Award, Intercultural Community Sidewalk Festival

Items 6 through 9 above are reflective of local, regional, or provincial (rather than national or international) recognition.

Also submitted was a certificate and accompanying translation indicating that the petitioner was "awarded for [her] contribution to the successful performance on behalf of Hubei Peking Opera Troupe in [the] Reporting and Exchange Show in Beijing" (1997). Another certificate and accompanying translation indicates that the petitioner "was awarded for [her] contribution to the Seventh National Contest held in Beijing" in September 1993. An additional certificate and accompanying translation indicates that the petitioner "performed successfully" in the 1996 Spring Festival Evening Show of Si Chuan Province. The petitioner offers no evidence to show that these three certificates are nationally or internationally recognized awards, rather than simply an acknowledgment of her participation in the preceding events.

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 her 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.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant performing arts awards subsequent to her arrival in the United States in 1998. Participation in a community "sidewalk festival" in Flushing, New York is not tantamount to national recognition in the United States. Clearly, the petitioner has not sustained whatever acclaim she 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, a fixed minimum of education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. In addition, membership in an association that evaluates its membership applications at the local or provincial level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Documentation accompanying the petition included evidence of the petitioner's membership in the Association of Chinese Artists (ACA). The record, however, contains no evidence of ACA's bylaws or membership requirements to demonstrate that it requires outstanding achievement in the performing arts. Assertions from the petitioner regarding the exclusive nature of the ACA's membership requirements are not adequate to satisfy the "extensive documentation" requirement for this classification set forth at section 203(b)(1)(A)(i) of the Act. *See also Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In view of the foregoing, it has not been established that the petitioner's membership in ACA required outstanding achievement or that her admission to membership was evaluated by experts at the national or international level.

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

The petitioner submitted an article she authored, entitled "Combination of Science and Art, Development of Traditional Opera," which appeared in *Peking Opera of China* in 1996. The record, however, contains no evidence (from an objective source such as a media guide, for example) regarding the national or international circulation of the edition in which the petitioner's article appeared. Nor is there any supporting evidence showing that the petitioner's article is widely viewed throughout her field as significantly influential.

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 her arrival in 1998, there is no evidence showing that the petitioner’s primary occupation in the United States involves Peking Opera.

We further note that the petitioner’s People’s Republic of China Passport lists her profession as a “teacher” rather than a Peking Opera actress.

On appeal, the petitioner submits an additional article entitled “Life Daily.” The translation [REDACTED] accompanying this article was not certified as required by the regulation. In addition, there is no information regarding the name of the individual who authored this article or its date of publication. Finally, the petitioner’s name does not appear anywhere in the text. Based on the information presented, we find that the article is not adequate to satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(iii) or (vi).

For the reasons discussed above, the record is ambiguous regarding the petitioner’s acclaim throughout her native China, and there is no evidence showing that the petitioner has sustained whatever acclaim she earned in China since her 1998 arrival in the United States. Nor has the petitioner adequately demonstrated that she 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 she 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 herself as a performer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her 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.