

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

B2



FILE:



Office: TEXAS SERVICE CENTER

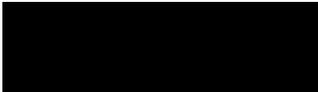
Date:

SEP 28 2005

SRC 05 011 51712

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.

Mai Johnson

S

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 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 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 she 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 "Flower Drum Opera Performer." 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 February 2000. 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.

In support of the petition, the petitioner submitted two photographs, but she did not explain who and what were shown in the photographs. This evidence was not sufficient to demonstrate the petitioner's sustained national or international acclaim, or that her achievements have been recognized in her field of expertise. On

November 8, 2004, the director denied the petition, finding that the petitioner's evidence did not satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3).

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.

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 amateur children.

The petitioner re-submits a photograph of what she now claims is evidence of her participation as a judge in the "2000 Chinatown Flower drum contest." The petitioner, however, does not appear in this photograph. Nor is there evidence from the competition's organizers describing the competition or confirming the petitioner's participation. 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)). Even if we were to accept the petitioner's claim that she served as a judge at this contest, she has not shown that this competition was national in scope rather than local in scope. Nor is there any indication that this contest involved established professional performers rather than amateur youth. Furthermore, we note that the petitioner claims eligibility under this criterion based on her involvement with only one contest in 2000. The statute and regulations, however, require the petitioner's acclaim to be *sustained*. We find that the petitioner's infrequent participation is not indicative of *sustained* national or international acclaim.

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 her alleged authorship of an entitled "Flower Drum Song – The Reviews are In." The name of the publication in which the article appeared has not been identified. The record contains no evidence showing that this article was actually published or evidence of its significant national or international distribution. Nor is there supporting evidence showing that the petitioner's article is viewed throughout her 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 re-submits a photograph of what she now claims is evidence of an "advertisement selling tickets" for "Flower Drum Song." The petitioner also submits a promotional piece entitled "Flower Drum Song Tickets," but the petitioner's name is not identified in the advertisement. Nor is there any evidence from the producer or director of "Flower Drum Song" discussing the petitioner's role in the production. Even if we were to accept that the petitioner played a leading role in this production (which we do not), the plain wording of this criterion requires the petitioner to submit evidence of her commercial success in the form of "sales" or "box office receipts." In this case, the petitioner has not shown that the productions in which she played a leading role (if any) have consistently drawn larger audiences and higher box office grosses than most others in her field, at the national or international level.

We concur with the director's finding that the petitioner has failed to demonstrate that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

It should be noted that the record contains a copy of the petitioner's passport, issued in Shenyang by the Ministry of Foreign Affairs of the People's Republic of China on June 30, 1999. Under "Profession," the passport identifies the petitioner as a "Manager," despite the petitioner's claim that she is nationally recognized as a Flower Drum Opera performer. The petitioner has not resolved this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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.

Review of the record does not establish that the petitioner has distinguished herself 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.

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.

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.