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FILE:

[REDACTED]
EAC 03 007 53201

Office: VERMONT SERVICE CENTER

Date: SEP 28 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.

Mai Johnson

S 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 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 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 5, 2002, 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 a certificate (dated August 15, 1998) with an accompanying English language translation indicating that he received an "Excellent Award of Lao-Sheng Group in the 1998 National Peking Opera Competition of Stage Performance."

The petitioner submitted a second certificate (also dated August 15, 1998) with an accompanying translation indicating that he received an "'Excellent Lao-Sheng Award' in the 1998 National Peking Opera Performer Contest."

The petitioner submitted a certificate (dated December 10, 1997) and accompanying translation stating that a play in which he participated won an "Excellent Performance Award in the National Traditional Opera Joint Show of 1997." The record contains no evidence to show that the petitioner played a leading role in this play or that the award was attributable to his individual performance.

The petitioner submitted a certificate and accompanying translation indicating that he "was awarded for his contribution in the Third National Peking Opera Competition" (May 1995). The petitioner offers no evidence to show that this certificate is a nationally or internationally recognized award, rather than simply an acknowledgment of his participation in the competition.

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.

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.

The director's decision noted that the record contained "no evidence of the criteria used to select the winner of these awards, or of the size of the pool of candidates from which the winner was selected."

On appeal, the petitioner addresses the director's observation stating:

First, I sent some letters to the key persons of the selection commission of these awards. These people are the experts who are with extraordinary ability in Peking Opera Performance [sic]. Some of them give me reply soon [sic]. They told me that there have no special criteria used during that time [sic].... About the size of the pool of candidates from which the winner was selected, I can submit the confirmation letter for this issue. In 1998, there had 2-3 professional performers and 2-3 amateur performers of each big city of China to attend the performance competition [sic]. Totally, there had 90-110 professional performers took part in the competition [sic].

As of this date, more than 22 months after the appellate submission, the AAO has received nothing further from the petitioner. Letters from "key persons of the selection commission" discussing the selection criteria or the size of the pool of candidates have not been provided. 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)).

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant performing arts awards subsequent to 1998. The absence of such awards suggests that the petitioner has not sustained whatever acclaim he 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, 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.

Documentation accompanying the petition included evidence of the petitioner's membership in the Guangzhou Chinese Traditional Peking Opera Troupe and the Chinese Artists Association. According to the translation accompanying the petitioner's membership card from the Chinese Artists Association, the petitioner's membership grade is listed as "Second-Class Performer of State." The petitioner does not explain how being a "Second-Class Performer" indicates that he is one of that small percentage who have risen to the very top of the performing arts field. We further note that the Guangzhou Chinese Opera Troupe is a local association rather than a national or international association. In regard to both organizations, the record contains no evidence of their bylaws or official membership requirements to demonstrate that they require outstanding achievement in the performing arts. Assertions from the petitioner regarding the exclusive nature

of their 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 Soffici* at 158, 165.

In conclusion, there is no evidence showing that admission to membership in the preceding organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

In addressing this criterion, the petitioner (in a letter dated October 2, 2002) states:

I am a second-class performer of state in Guangdong [Guangzhou] Province, China, as evidenced by my membership card of Association of Chinese Artists [sic]. I had worked as a principal Peking Opera actor in Guangdong Traditional Chinese Peking Opera Troupe for 8 years since 1990. The troupe has been giving wonderful tour shows of Peking Opera performances in Guangdong Province, to the satisfaction of fans in southern China. I had been playing leading Lao-Sheng role in many of its classic Peking Opera plays [sic].

The record, however, contains no published reviews of the petitioner’s Peking Opera performances to demonstrate that his acting roles earned him significant acclaim throughout China. It has not been established that the petitioner’s role in the Guangzhou Troupe is any more critically acclaimed than that of the other performers. Furthermore, the record does not adequately demonstrate that the Guangzhou Peking Opera Troupe, which the petitioner claims to have worked for since 1990 (according to his letter), has earned a distinguished reputation when compared to other Peking Opera troupes throughout China. We find the petitioner has not established that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). As noted previously, this regulation and section 203(b)(1)(A) of the Act require the petitioner’s acclaim to be *sustained*. The record reflects that the petitioner has been present in the United States since June 25, 2000, but there is no evidence showing that the petitioner has been involved in any work related to Peking Opera performances during the last five years. Specifically, the petitioner has been the beneficiary of two approved P-3 nonimmigrant petitions that authorized him to work in the United States as an artist/entertainer from June 4, 2001 to June 4, 2003 (SRC 01 180 54447 and SRC 02 179 52512, filed by Tong Hui International Culture Exchange and Taoshan International Culture Exchange, respectively). Astonishingly, the petitioner has submitted no evidence of his work as a performer even during that authorized two-year period. Based on the lack of evidence that the petitioner has been working in his area of expertise, he has not established the *sustained* national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

It should be noted that the record contains a copy of the petitioner's passport, issued in Guangxi by the Ministry of Foreign Affairs of the People's Republic of China on June 15, 1998. Under "Profession," the passport identifies the petitioner as a "Manager," despite the petitioner's claim that he is nationally recognized in China as an 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.

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 arrival in the United States in 1998.

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.

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.