



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: FEB 16 2006

EAC 04 217 50422

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:

[REDACTED]

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.

Σ 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 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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on July 19, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a performing artist. 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 17, 2003. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than 18 months), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a performing artist 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 the following:

1. A fill-in-the-blank "Flushing 2002 Millennium Award" for participation in a "Community Sidewalk Festival" sponsored by the Chinese Business Association of Flushing, New York
2. "Certificate of Honor" from the "Association of Chinese Traditional Opera Performers" stating that the petitioner won the award of "NATIONAL TEN PEKING OPERA ELITE" (May 1998)
3. "Certificate of Honor" stating that the petitioner received the "First Grade Prize in the Selection & Judgement [sic] Competition of the Performance Exhibition of [REDACTED] (January 9, 2001)
4. "Certificate of Honor" from the "Culture Administration of Liaoning Province" stating that the petitioner received a "First Grade Prize in the Young Performers of [REDACTED] Competition of [REDACTED] (October 26, 2000)
5. "Certificate of Honor" stating that the petitioner received the "First Grade Prize in the [REDACTED] Performance of the [REDACTED]" (June 21, 2001)
6. "Certificate of Award" stating that the petitioner "won the First-Grade Performance award of *musical instrument* [emphasis added] in the [REDACTED] (June 20, 2001)
7. "Honor Award" stating that the petitioner was named "One of the Ten Perfect Performer of Art of China, in 2000"
8. "Certificate of Award" issued by the "Association of Chinese Musicians" stating that the petitioner won the "[REDACTED] Award of Chinese Traditional Opera" (December 22, 1997)
9. "Certificate of Honor" issued by the "Culture and Art Administration of People's Republic of China" stating that the petitioner received a "First Grade Prize of Performance . . . in the [REDACTED] Performance Competition of [REDACTED] in 1999" (September 1999)
10. "Certificate of Honor" stating that the petitioner "won the Excellence Performance Award of 1999 CCTV [China Central Television] Spring Festival Evening Show owing to his outstanding performance in [REDACTED]" (February 15, 1999)
11. "Certificate of Honor" stating that the petitioner "performed successfully in 1998 Chinese Spring Festival Evening Show held by CCTV" (February 14, 1998)
12. "Certificate of Award" stating that the petitioner received the "First Prize in [REDACTED] National [REDACTED] (September 5, 1995)
13. "Certificate of Award" stating that the petitioner "won the Excellent Performance Award in [REDACTED] Group' in 1998 National Traditional Opera Stage Performance Contest" (August 15, 1998)
14. "Certificate of Honor" from the "China Musician Association" stating that the petitioner received "the Perfect Performance Prize owing to [his] excellent performance in the China *Traditional Instruments* [emphasis added] Competition in 1998" (August 18, 1998)
15. "Certificate of Honor" issued by the "Association of Chinese Traditional Opera Performers" stating that the petitioner "won the Third-Grade Award of [REDACTED] in Stage Art Group of Chinese Traditional Opera Performance Competition" (December 28, 1997)

16. "Certificate of Honor" stating that the petitioner received the "First Grade Prize of National Youth Traditional Opera & Music Competition in 1997" (September 1997)
17. "Certificate of Award" stating that the petitioner "won the title of the Best Young Artist in the [REDACTED] Festival of [REDACTED] Province" (February 1997)
18. "Certificate of Honor" stating that the petitioner "performed successfully in 1999 Spring Festival Evening Show of [REDACTED] held by [REDACTED]" (January 1997)
19. "Certificate of Honor" stating that the petitioner received the "First Grade Award of Outstanding Youth 1996 in National Traditional Opera Exchange Show" (September 1996)
20. "Certificate of Honor" stating that the petitioner "was awarded for his contribution in the Third National Traditional Opera, Drama and Local Drama Competition" (May 1995)
21. "Certificate of Honor" stating that the petitioner "won the Second-Grade Award in 1994 National Traditional Opera, Stage Play and Opera Contest" (December 1994)
22. "Certificate of Award" stating that the petitioner "won the Award of Traditional Opera Accompanist in the fourth Art Festival of Shen Yang City" (September 8, 1994)<sup>1</sup>

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 preceding award certificates were not certified as required by the regulation.

The petitioner also submitted a "Certificate of Award" and an accompanying certified English language translation stating that he "won the 'Little Plum of Chinese Opera Arts' Award" on September 6, 1993 (at the age of 13). In regard to this certificate and items 4, 12, 16, 17, and 19, we find that such "youth" and "student" awards offer no meaningful comparison between the petitioner and experienced professional performers. There is no indication that the petitioner faced competition from throughout his entire field, rather than his approximate age group within that field. These awards are not an indication that the petitioner has reached the "very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

We find that items 1, 4, 5, 6, 17, 18, and 22 reflect local or provincial recognition rather than national or international recognition.

In regard to items 1, 11, 18, and 20, there is no evidence showing that these certificates are nationally recognized awards for excellence in the performing arts, rather than simply an acknowledgement of the petitioner's participation in a particular event.

Regarding items 3, 4, 8, 9, 12, 13, 14, 15, 16, and 21, we note that large-scale competitions typically issue event programs listing the various award categories and the names of the participating contestants. 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 submitted no event programs or official comprehensive results (specifically naming all of the entrants or award recipients) for each of the competitions for which he submitted award certificates.

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<sup>1</sup> We note here that the petitioner was only 14 years old as of September 8, 1994.

Astonishingly, items 6 and 14 cite the petitioner's "First-Grade Performance award of *musical instrument*" [emphasis added] and "performance in the China *Traditional Instruments*" [emphasis added]. The petitioner, however, is a Peking Opera actor rather than an instrumental musician. These awards are completely unrelated to the petitioner's stated area of expertise.

For some inexplicable reason, the "Flushing 2002 Millennium Award" (item 1) pictures a seal dated both "2002" and "2003." It is not apparent as to when this local festival actually took place. We note, however, that the petitioner did not enter the United States until January 17, 2003. Therefore, the name of this award is inconsistent with the petitioner's date of entry into the United States. The petitioner has not explained this discrepancy.

In regard to items 1, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence showing that the certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. In these instances, there is no supporting documentation from the awarding entities or the print media to establish that the petitioner's awards are nationally recognized awards.

In response to the director's request for evidence (RFE), the petitioner re-submitted items 2, 3, 4, 8, and 12. Along with each of these award certificates, the petitioner submitted an accompanying newspaper article with an incomplete English language translation. For items 3 and 8, the petitioner also submitted what appear to be web site printouts discussing these two awards, but the specific source of these documents has not been identified and they were not accompanied by full English language translations. The regulation at 8 C.F.R. § 103.2(b)(3), however, requires the petitioner to submit full English language translations.

Regarding item 8, we note that this award certificate was issued by the "Association of Chinese Musicians" on "December 22, 1997." The accompanying newspaper article from *China Culture Daily*, dated "March 16, 1997," states: "The award ceremony for Chinese Opera Plum Blossom Award is held today in Beijing. . . . There are 13 prizewinner in Peking Opera field, including Yuancai Tang, [the petitioner], Huiying Ni . . ." <sup>2</sup> This article indicates that the award ceremony was held on March 16, 1997, yet, for some inexplicable reason, the petitioner's award certificate is dated December 22, 1997, more than eight months later. This is not the only significant discrepancy related to this award, however.

On appeal, counsel states: "The annual Plum Blossom Award is sponsored by the *Chinese Opera Journal*. Each year the journal invites dozens of opera and drama players to perform in a Beijing theater. The award goes to those who top the poll conducted by this journal." Interestingly, the petitioner has not submitted an official letter of support regarding his award originating from the *Chinese Opera Journal* itself. We cannot ignore that the petitioner's award certificate (item 8) was issued by the "Association of Chinese Musicians," rather than the *Chinese Opera Journal*. Yet another inconsistency arises when examining the petitioner's response to the director's request for evidence. The petitioner's response included a document entitled

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<sup>2</sup> The record includes no evidence indicating the volume of national readership of *China Culture Daily*.

“Introduction to Plum Blossom Award of Chinese Traditional Opera” indicating that the “Chinese Dramatists Association” issues the recommendations for the Plum Blossom Award (rather than the *Chinese Opera Journal*). Raising further questions regarding item 8 is the existence in the record of item 9, a “Certificate of Honor” issued by the “Culture and Art Administration of People’s Republic of China.” This certificate (item 9) states that the petitioner received a “First Grade Prize” in the “Plum Blossom Cup.”<sup>3</sup> The petitioner has not adequately explained whether there is a difference between a “First Grade Prize in the Plum Blossom Cup” and a “Plum Blossom Award.” While both items 8 and 9 have “Plum Blossom” in their title, the awarding entity for item 9 was the “Culture and Art Administration of People’s Republic of China” rather than the Association of Chinese Musicians, the Chinese Dramatists Association, or the *Chinese Opera Journal*.

Thus, in regard to item 8, we find that the petitioner has not resolved the multiple discrepancies in the record regarding this certificate’s date of issue and the name of the issuing entity. 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).

In support of item 3, the petitioner’s response to the director’s RFE included a document entitled “Brief Introduction to Selection & Judgment Competition of the Performance Exhibition of National Excellent Performers of Peking Opera.” Astonishingly, the petitioner’s response included two contradictory versions of the same English language translation of this document.<sup>4</sup>

The first version states: “This competition is sponsored by The Ministry of Culture of People’s Republic of China. It gathers over 370 artists . . . .”

The second version states: “This competition is sponsored by The Ministry of Culture of People’s Republic of China and is one of the largest national level competitions. It gathers over 370 artists . . . .”

As stated previously, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. 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. See *Matter of Ho* at 582, 591-92. Based on the multiple discrepancies in the record and the preceding discussion of items 1 through 22, we cannot conclude that the petitioner meets this criterion.

*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

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<sup>3</sup> The record includes no supporting evidence pertaining to this award.

<sup>4</sup> Both English language translations were incomplete, partial translations.

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 petitioner submitted partially illegible photocopies of what are alleged to be his Certificate of Membership for the Liaoning Province Branch of the Chinese Dramatists Association (CDA) and his Membership Card for the China Artists Association (CAA).<sup>5</sup>

The CAA membership card lists the petitioner's age as "22" and an issuance date of "March 2001." We note, however, that the petitioner was born on October 24, 1979. As of March 2001, the issue date of this membership card, the petitioner would have been age 21 not age 22. The petitioner has not resolved this discrepancy raising further doubts regarding the reliability of the evidence submitted in support of the petition. *See Matter of Ho* at 582, 591-92.

The petitioner also submitted a "Qualification Certificate of Specialty and Technology" issued by the Liaoning Provincial Personnel Department. We do not find, however, that a "qualification certificate" issued by a regional government is tantamount to membership in an association requiring outstanding achievement.

In response to the director's RFE, the petitioner submitted a document entitled "Introduction to Chinese Dramatists Association." This document was accompanied by an incomplete English language translation consisting of only three sentences. The regulation at 8 C.F.R. § 103.2(b)(3), however, requires the petitioner to submit a full English language translation. Nevertheless, the three-sentence translation does not identify the specific criteria for admission to membership.

In this case, the petitioner has not submitted evidence of the membership bylaws or the official admission requirements for the preceding organizations. There is no evidence showing that admission to membership in these associations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his 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 general, 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

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<sup>5</sup> The record does not include the original versions of these documents.

particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>6</sup>

The petitioner submitted several brief articles appearing in Chinese-language newspapers published in New York such as the *Liberty Times*, *Sing Tao Daily*, *China Press*, and the *New York Community Times*.<sup>7</sup> Aside from the petitioner not being the primary subject of the majority of these articles, it has not been shown that any of these publications have substantial national readership beyond Chinese language readership in the New York metropolitan area. **There is no specific data regarding their volume of U.S. readership. Because the overwhelming majority of the U.S. population does not read or comprehend Chinese, it has not been shown that an article appearing in such publications constitutes published material in “major media.”**

The petitioner also submitted three articles from January 2001 allegedly originating from the following newspapers published in China: *Liaoning Daily*, *China Culture Daily*, and *China Culture Newspaper*.

The January 10, 2001 article from *Liaoning Daily* did not identify its author or include a certified English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The January 11, 2001 article from *China Culture Daily* was not accompanied by a certified English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the petitioner was not the primary subject of this article.

The January 6, 2001 article from *China Culture Newspaper* did not identify its author or include a certified English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3).

In response to the director’s RFE, the petitioner submitted an article appearing in *Beijing Evening News* dated September 22, 1995. This article did not identify its author, nor was it accompanied by a full English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no indication that the petitioner was the primary subject of this article.

In addition to the preceding deficiencies, we note that the statute and regulations required the petitioner’s acclaim to be sustained. The record, however, includes no evidence showing that the petitioner has been the subject of national level media coverage since his arrival in the United States.

*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 a photocopy of an article that he allegedly published in *Peking Opera of China* in 1996. At that time, the petitioner would have been age 16 or 17. The article itself and its magazine cover

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<sup>6</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.

<sup>7</sup> All of the articles relate to local community events that occurred in New York. For example, the article in *Liberty Times*, which is not primarily about the petitioner, discusses a group performance at Murry Bergtrum High School.



- list the same telephone number and fax number despite being located on different streets and in different zip codes.
3. The letter from the [REDACTED] has the same telephone number as the letter from the [REDACTED]. These organizations list the same telephone number and fax number despite being located on different streets and in different zip codes.
  4. The letter from the [REDACTED] Traditional Art Performing Company bears the same address as the letter from the [REDACTED] and lists same telephone number and fax number as the letter from the [REDACTED] Traditional Art Performing Company and the [REDACTED] list the same telephone number and fax number despite being located on different streets and in different zip codes.
  5. The letter from the [REDACTED] has the same phone number as the letter from the [REDACTED]. These organizations list the same telephone number despite being located on different streets and in different zip codes.

The petitioner has not resolved these alarming discrepancies. As stated previously, 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. Such discrepancies raise further doubts regarding the reliability of the evidence submitted in support of this petition. *See Matter of Ho* at 582, 591-92. In view of the multiple aforementioned deficiencies, we find these letters to be of no probative value.

On appeal, counsel describes these letters as “recommendations from well-known American Chinese artists and organizations.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We cannot ignore that the preceding letters all originate from Flushing, New York. These letters fail to demonstrate that the petitioner’s reputation extends beyond this one locality. Furthermore, none of the letters provide sufficient detail to demonstrate that the petitioner performed in a leading or critical role for a distinguished arts organization in China or the United States.

The petitioner also submitted letters allegedly issued by [REDACTED], former Vice Chairman of the China Dramatist Association, and [REDACTED] President of the Lanfang Mei Peking Opera Theater. These letters have no address, telephone number, or any other information through which these individuals may be contacted. The letters from [REDACTED] and [REDACTED] briefly discuss a few of the petitioner’s stage performances and awards, but their statements are not adequate to demonstrate that he performed in a leading or critical role for a distinguished organization or that he earned sustained national or international acclaim in the performing arts.

The petitioner also submitted a letter allegedly issued by the Jinzhou Peking Opera Theater indicating his salary as of December 2002. This letter includes no address, phone number, name of an issuing official, or any other information regarding how this organization may be contacted. There is no evidence showing that this organization has earned a distinguished reputation at the national or international level. Nor has the

petitioner submitted evidence from an official representative of this theater detailing his exact dates of employment, the nature of his acting roles, and his individual importance to the theater's overall success. Thus, the petitioner has not established that he performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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

As noted under the preceding criterion, the petitioner submitted a letter allegedly issued by the Jinzhou Peking Opera Theater indicating his salary as of December 2002.<sup>9</sup> This letter states:

[The petitioner's] salary per month is as follows:

Basic salary:	\$1,800
Bonus:	\$1,500
Other Allowance:	\$1,300
Total	\$4,600

[The petitioner's] salary is ranked first in our theatre.

This letter indicates that the petitioner's salary ranks first at the [REDACTED] This salary comparison is not appropriate, however, because it excludes salary data for performers from other theaters throughout China. We find it interesting that the certified English language translation accompanying this letter expresses the petitioner's earnings in dollar amounts rather than Chinese Yuan. The record contains no supporting official financial documentation (such as payroll records from the theater or income tax forms) showing the petitioner's actual earnings for any specific period of time prior to December 2002.

The record also includes copies of the petitioner's U.S. income tax returns for 2003 and 2004 reflecting yearly earnings of \$15,000 and \$21,000, respectively.

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 in the preceding instances was significantly high in relation to that of others in his field. We find no evidence showing that the petitioner earns a level of compensation that places him among the highest paid performing artists in China or the United States.

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

This criterion calls for commercial success in the form of "sales" or "receipts"; simply submitting playbills and other printed materials showing that the petitioner took part in various performances cannot meet the plain

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<sup>9</sup> This letter includes no address, phone number, name of an issuing official, or any other information regarding how this organization may be contacted.

wording of the regulation. The record includes no evidence of documented “sales” or “receipts” showing 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.

The petitioner submitted a digital video compact disc featuring one of his performances. The record, however, includes no evidence showing that this DVD has a high sales volume in China or the United States.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Documentation in the record indicates that the alien is the beneficiary of an approved O-1 nonimmigrant visa petition filed on April 19, 2004 and valid from May 1, 2004 to April 30, 2007. However, extraordinary ability in the nonimmigrant context means distinction, which is not the same as sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes the nonimmigrant O-1 criteria less restrictive for a beneficiary in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

While CIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff’d*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.

In view of the multiple deficiencies and inconsistencies in the petitioner's evidence in this case, the director is instructed to review the O-1 nonimmigrant approval, EAC 04 146 53802, for possible revocation, pursuant to 8 C.F.R. § 214.2(o)(8)(iii).

**ORDER:** The appeal is dismissed.