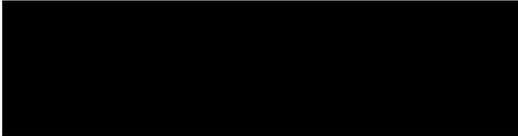


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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 06 2006

EAC 05 075 51034

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, 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. 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 January 3, 2005, seeks to classify the petitioner as an alien with extraordinary ability in the martial arts.

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, internationally 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. "Honor Certificate" from the "People's Republic of Liaoning Province" stating that the petitioner was "appraised as the activity Individual" of that province (1999)
2. "Honor Certificate" from the "Culture Bureau of Shenyang City" stating that the petitioner was "appraised as the activity Individual" of that city (1994)
3. "Honor Certificate" stating that the petitioner "won the Golden Award of Long Hui Sword Competition" at the "'Chao Sai De Cup' of the 3<sup>rd</sup> Annual International Wushu Communication Competition" (1997)
4. "Honor Certificate" stating that the petitioner won the "'Yong Lin Cup' Ten Outstanding Wushu Award" (1990)
5. Fill-in-the-blank "Certificate" stating that the petitioner "achieved the fist [sic] of M (Middle Age) Group C Changquan in the competition 99' China Qingdao International Wushu Championship" (August 27, 1999)<sup>1</sup>
6. Fill-in-the-blank certificate allegedly issued by the "National Physical Education Sports Committee of the People's Republic of China" stating that the petitioner won the "Fourth Grade Award in the Male Other Weapon Competition" at the "National Wushu Competition" (1998)
7. Certificate naming the petitioner a "First Level National Outstanding Athlete of 1999"
8. Fill-in-the-blank certificate (undated) from the "Chinese Wushu Association" stating that the petitioner "passed the Wushu Dan Examination"
9. "Honor Certificate" naming the petitioner "National Wushu Outstanding Individual" (1996)

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.

In regard to items 1 and 2, we find that these awards reflect local or provincial recognition rather than national or international recognition.

In regard to items 3, 5, and 6, we note that large-scale competitions typically issue event programs listing the order of events and the names of the participating athletes. 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 provided no evidence of the official comprehensive results for the competitions for which he submitted award certificates.

In regard to items 1 through 9, 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

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<sup>1</sup> Aside from what appears to be a misspelling of the word "first," we find it unusual that the petitioner, who would have been age 29 at this competition, would have competed in the "Middle Age" category.

under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. In this case, there is no documentation from the awarding entities or the print media to establish that the petitioner's awards are nationally or internationally recognized awards.

In addition to the above deficiencies, the record includes no evidence showing that the petitioner has received any awards subsequent to the 1990's. The absence of awards in recent years suggests that the petitioner's acclaim has not been sustained.

*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.

The petitioner submitted what is alleged to be his membership certificate for the Chinese Wushu Association (CWA) indicating "Dan: 7." The petitioner does not explain how attaining level 7 Dan demonstrates that he "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). Further, the record does not include the membership bylaws or the official admission requirements for the CWA. There is no evidence showing that admission to membership in the CWA 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 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 particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>2</sup>

The petitioner submitted a certificate stating that his biographical sketch was included in *A Dictionary of Contemporary Chinese Martial Artists*. The record, however, includes no evidence of the actual published material about the petitioner appearing in this publication. The plain wording of this criterion requires the petitioner to submit “published material about the alien” and evidence of “the title, date, and author of the material, and any necessary translation.” The record includes no such evidence.

The petitioner also submitted two articles allegedly published in the *Liaoning Evening News* and the *Half Island City Newspaper* in 2002. The translations accompanying these articles were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that these publications have substantial national readership or that the petitioner has been the subject of media coverage in the United State or China subsequent to 2002.

In response to the director’s request for evidence and again on appeal, the petitioner submitted a document entitled “Liaoning Evening newspaper.” The source of this document has not been identified, nor was it accompanied by a certified translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). While the first seven sentences of this document discuss the newspaper, the final two sentences read as follows: “[redacted] farmers paint drawings is [sic] well known in Liaoning. His accomplishment in folk art is highly complimented by Liaoning evening.” These statements are completely irrelevant to the petitioner’s case, yet for some inexplicable reason they are included in the uncertified translation. At a minimum, these two sentences raise doubt as to the accuracy the translation submitted by the petitioner. 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.

In this case, we find no evidence to demonstrate that the petitioner has earned sustained acclaim in the national media of China or the United States.

*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.

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<sup>2</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.

The petitioner submitted a "Letter of Appointment" (dated March 5, 1996) allegedly issued by "Ximen Cultural Art Broadcasting, Inc. of Quingdao" stating that it appointed the petitioner to be its "director" and "Wushu Movement Designer." This document includes no address, phone number, or any other information regarding how this company may be contacted. Nevertheless, it has not been shown that this organization has earned a distinguished reputation at the national or international level. Nor has the petitioner submitted evidence detailing the dates of his service, his specific responsibilities for the company, and his individual importance to its overall success. We find 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.

In this case, the petitioner 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.

The petitioner's appeal was filed on October 17, 2005. The appellate submission was accompanied by supporting evidence (which has been addressed in this decision). On the Form I-290B, Notice of Appeal to the AAO, however, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than two months later, the AAO has received nothing further.

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

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).

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.