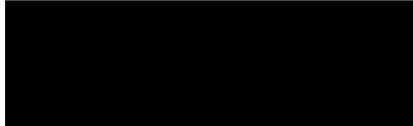


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FILE: [REDACTED]
WAC 05 198 51408

Office: CALIFORNIA SERVICE CENTER Date: JUN 11 2006

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 June 29, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a Peking 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 1993. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than twelve years), 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 (issued on May 17, 1991) stating that he "won the Silver Prize for Peking Opera Team of the National 'Work hard for its prosperity' Arts show." The petitioner also submitted a "Certificate of Honor" (issued on March 6, 1989) stating that "Three Fork in a Road," an opera in which he is alleged to have appeared, "won first prize in the Second Traditional Opera performing Grand Contest." The evidence indicates that these awards were group awards rather than individual awards making the petitioner's level of contribution difficult to ascertain. It cannot suffice that the petitioner was one member of a large group that earned collective recognition.

The petitioner's initial submission also included a "Certificate of Award" (issued on October 19, 1992) stating that he earned the title "National Top Ten outstanding Peking Opera Performer." Simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. There is no evidence of contemporaneous publicity surrounding the petitioner's receipt of this award or evidence showing that it commands a substantial level of recognition.

On appeal, the petitioner submits a "Certificate of Appreciation" allegedly issued on December 3, 2003 by the American Chinese Communications Association for his participation in "Asian Month in New York City" (December 3, 2003). This award, however, reflects local or institutional recognition rather than national or international recognition.

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. Further, because the statute requires "extensive documentation" of sustained national or international acclaim, the petitioner must submit evidence showing that his awards enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or the print media establishing that the petitioner's awards are nationally or internationally recognized performing arts awards.

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 a "Letter of Appointment" dated November 12, 1987 naming him a member of the Association of Chinese Dramatists (ACD).

The petitioner also submitted a photocopy of what is alleged to be his membership card for the Association of Chinese Artists (ACA). The membership card lists the petitioner's age as "48" and an issuance date of "March 12, 1990." We note, however, that the petitioner was born on February 17, 1957. On March 12, 1990, the issue date of this membership card, the petitioner would have been age 33 not age 48. In addressing this discrepancy, the director's decision stated that "the authenticity, value, and credibility of this card has not been established." We concur with the director's finding.

On appeal, the petitioner states:

Regarding to the age mistake showing [sic] on my membership card of Association of Chinese artist, the fact is: when the association first issued this card to me in March 12, 1990, my age showed [sic] on the card was 33 years old, it was correct. Unfortunately, I lost this membership card for unknown reason in January 2005, and I immediately contacted the association after I knew the truth and re-apply for membership card, eventually they agreed to give me a copy of the old membership card in stead [sic] of the lost one. However, what happen was the staff of the association put my current age 48 on the new card but still marked the original issuing date of March 12, 1990, this is the reason why the issuing date of the card doesn't match my actual age at that moment

The petitioner has not submitted evidence from an official representative of the ACA to corroborate his explanation. On appeal, the petitioner submits a photocopy of a second version of his ACA membership card.¹ The appellate version of the ACA membership card shows an issue date of March 12, 1990; however, the petitioner's age has been changed to reflect age 33. The petitioner's above explanation, however, indicates that his membership card with the "correct" age was "lost . . . in January 2005" and that he was issued a "new card" which listed his age as 48. The petitioner does not indicate how he was able to submit a photocopy of his original membership card (which shows his correct age, 33, and was allegedly "lost . . . in January 2005") at the appellate stage, yet unable to submit that same version at the time of filing. Based on the preceding observations, we find that the petitioner has not resolved the discrepancy regarding his ACA membership card. 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

¹ In light of the initial discrepancy, we find that a photocopy of another version of petitioner's ACA membership card is not acceptable evidence. The petitioner's failure at the appellate stage to submit an original copy of either his "new" or "old" ACA membership card (rather than a photocopy) is a significant omission from the record.

a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

The petitioner's appellate submission also includes a certificate indicating that he is a member of The World Association of Beauty Culture (WABC) of Flushing, New York.

In this case, the petitioner has not submitted evidence of the membership bylaws or the official admission requirements for the WABC, ACD, or ACA. 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.

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 that he allegedly published in *Chinese Opera* entitled "Facial Makeup Represent Different Characters." The record, however, includes no evidence of the field's reaction to this article, nor any indication that it is widely viewed as significantly influential. Furthermore, there is no evidence showing that the publication featuring this article had substantial national or international readership.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted various photographs of what are alleged to be his stage performances. This particular criterion, however, is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. Virtually every actor "displays" his work in the sense of performing in front of an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's stage performances are far more relevant to the "commercial successes in the performing arts" criterion.

Even if we were to address the petitioner's performances under this criterion, he has not demonstrated that his performances have consistently been the centerpiece of major productions at prestigious venues. Such a standard must be set for the petitioner to establish that he enjoys sustained acclaim near the top of his field.

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 what are alleged to be photographs of one's performances cannot meet the plain 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.

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).

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.

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.