

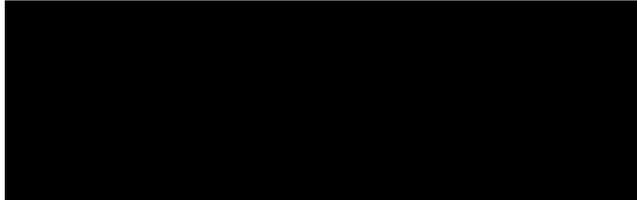
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U.S. Citizenship  
and Immigration  
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: OCT 02 2006  
EAC 03 039 50575

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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, reopened the matter on Service motion in order to allow an opportunity to respond to a request for additional evidence and subsequently denied the petition again. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director ultimately determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief. For the reasons discussed below, the petitioner has not overcome the bases of denial.

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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a Chinese folk singer. 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 that, she claims, meets the following criteria.<sup>1</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

Initially, the petitioner submitted a Certificate of Award issued by an unidentified entity for "Outstanding Achievement for Supporting China Flood Relief" on September 13, 1998 at the "New York Service Center" and a Participation Certificate from the Organizing Committee of the April Spring Friendship Art Festival, D.P.R. of Korea, expressing appreciation for participation at festival on an unknown date. The petitioner also submitted additional foreign-language certificates with no translations, asserting that translations would follow. The director requested evidence of the significance and scope of the awards. In response, the petitioner submitted copies of awards not previously claimed. Neither counsel nor the petitioner explains why these awards were not submitted initially. The new awards are as follows:

1. A June 1990 certificate purporting to confirm the petitioner as the winner of the 1993 [REDACTED] vocalist contest in Hernan Province;
2. June 1991 certificate from the Chinese Ministry of Education purporting to confirm the petitioner's Grand Trophy in the 1993 National Vocalist Contest in the category of "ethnic singer;"
3. A 1991 certificate from the China Musician Association awarding the petitioner a "top level trophy in the 1991 nationwide "Broadcasted New Song" contest and evaluation;
4. A June 1991 certificate from the Chinese State Administration of Radio, Film and Television awarding the petitioner as Silver Screen Trophy as winner of the [REDACTED] Singer Contest;
5. A March 1992 certificate from the Chinese State Administration of Radio, Film and Television awarding the petitioner a Silver Screen Trophy as winner of the [REDACTED] Singer Contest and
6. A July 2005 Certificate from the [REDACTED] and [REDACTED] awarding the petitioner's article "with the first prize of the 3<sup>rd</sup> nationwide new cultural theory study result."

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The petitioner offers no explanation for why two certificates predate by two or more years the awards they purport to confirm. Moreover, the petitioner offers no explanation as to why the Seventh Annual National Young Singer Contest took place almost one year *prior* to the Sixth Annual National Young Singer Contest. We acknowledge that we are relying on the dates contained in the translations. The translations, however, are certified as accurate by [REDACTED]. Either the certificates have diminished evidentiary value due to the serious discrepancies in dates noted in this paragraph or the translations have diminished evidentiary value due to inaccuracies.

The director noted that the initial awards were regional and that the petitioner had failed to submit the requested evidence regarding the significance of the awards submitted in response to the request for additional evidence. Thus, the director concluded that the petitioner had not established that she meets this criterion.

On appeal, counsel reiterates the awards listed above and asserts that the director rejected these awards "without reason." On the contrary, the director specifically stated that the record lacked evidence regarding the eligibility criteria for the awards, the number of awards issued and the criteria used to grant the awards. The petitioner does not submit this evidence on appeal.

We concur with the director. The record lacks evidence regarding the pool of competitors for each award or evidence indicative of national or international recognition such as media coverage of the award selections. The record contains no evidence regarding the significance of the China Central Cultural Management and Study Center, which issued an award to the petitioner in 2005, 12 years after the petitioner entered the United States. Regardless, the award was issued in 2005, over two years after the petition was filed. As such, it cannot serve as evidence of the petitioner's eligibility at that time. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The Hernan Province award is clearly a local award. The Silver Screen awards are age-based, and cannot serve to set the petitioner apart from the most experienced and renowned members of her field. The record contains no evidence regarding the significance of the New York Service Center or Spring Festival certificates of appreciation. Regardless, they appear to be expressions of appreciation for participating rather than nationally or internationally recognized awards or prizes for excellence in the field.

Finally, the date discrepancies discussed above cast doubt on either the original documents or the competence of the translator. Either way, the credibility or accuracy of the evidence submitted to establish the petitioner's awards is questionable. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 591-92. The petitioner has not resolved the above inconsistencies.

In light of the above, the petitioner has not established that she meets this criterion.

*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.*

The petitioner initially submitted what appear to be foreign language newspaper articles with no translations and no indication of the publication in which the articles appeared or when. Rather, counsel indicated that translations would be forthcoming. The director issued a request for the *complete* translations and evidence that the publications were major media. In response, the petitioner submitted summary translations of articles that appear in 1999 and 2000 in *Chin-Bao*, the *Mai-Hua Business News* and the *World Journal* and an article credited to the *People's Daily* on an illegible date and posted on a website with an illegible address on the copy submitted. The translator asserts that *Chin-Bao* is a Chinese language newspaper circulating in the United States; the *Mai-Hua Business News* is a Chinese-language newspaper based in Rockville, Maryland and the *World Journal* is "the most popular Chinese News Paper publishing and circulating in USA." The first article in *Chin-Bao* only pictures the petitioner with other performers at a Chinese New Years celebration. The second article in *Chin-Bao* reviews the Weill Recital Hall concert in honor of Premier Zhu Enlai, which took place a year and seven months prior to the review. The article in the *Mai-Hua Business News* appears to be a promotional piece for a performance at a local community college. The *World Journal* article is about an event to celebrate the award of the Olympics to Beijing. The article includes a single sentence about the petitioner. Finally, the article credited to the *People's Daily* is about the concert in honor of Premiere Zhu Enlai and includes only a single sentence about the petitioner.

The director concluded that the petitioner had not established that the articles appeared in major media or that they specifically covered the petitioner's work. Ultimately, the director determined that the evidence was not indicative of national or international acclaim. On appeal, counsel asserts that the articles "refer to the petitioner and her accomplishments and they are reported in major Chinese media organs."

Counsel is not persuasive. The regulation does not merely require published references to the alien. Rather, the petitioner must provide evidence of published materials "about the alien." It is inherent to the field of performing arts to receive brief mentions in local reviews of projects in which the performer was involved. Such materials are not primarily about the performer. The only article primarily about the petitioner is the article in the *Mai-Hua Business News*. This "article," however, appears to be a promotional press release rather than independent journalistic coverage. Regardless, the publication appears to be a local Maryland Chinese-language publication. Similarly, the other U.S. Chinese-language publications have not been demonstrated to be major media. In general, newspapers

published in a language that the majority of the population cannot comprehend are not considered major media such that coverage in these publications is indicative of national or international acclaim.

In light of the above, the petitioner has not established that she meets this criterion.

*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 entitled "Expression of Emotions in a Vocal Art Performance." As stated above, the petitioner also submitted a 2005 certificate from the Chinese Cultural Theory and Practice Evaluation Committee of the China Central Cultural Management and Study Center awarding the paper "First Prize." The article, however, begins on page 1 and bears no journal name. As noted by the director, the petitioner provided no evidence that the article was published. On appeal, counsel notes that the petitioner submitted the article and the award.

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) specifically requires the submission of evidence of scholarly articles *in professional or major trade publications or other major media*. Without evidence that the article was published and that it appeared in a professional or major trade publication or other major media, the petitioner cannot establish that she meets this criterion. The petitioner has not identified the publication, provided evidence that her article appeared in the publication or submitted evidence that the publication has a national circulation. Moreover, the petitioner has not established that the article was published prior to the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, the petitioner has not established that she meets this criterion.

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

This criterion is applicable to the visual arts. The petitioner is a performing artist; appearing on stage is inherent to her occupation. Not every performance is an artistic exhibition designed to showcase the performer's art. Counsel asserts that the petitioner performed at Carnegie Hall and Lincoln Center. The petitioner submitted a program for a February 28, 1998, 2:00 pm concert at the Weill Recital Hall at Carnegie Hall in honor of Zhou Enlai and a photograph of her singing on stage. As noted by counsel on appeal, the director acknowledged the evidence but noted that it was one performance in 1998.

The petitioner submitted no evidence that her single afternoon performance occurred on the main stage at Carnegie Hall, as opposed to a more intimate venue available for rental at Carnegie Hall.<sup>2</sup> The only evidence that the petitioner performed at Lincoln Center is an alleged photograph of the performance, a letter from [REDACTED], President of Columbia Promotions, LLC, asserting that he has successfully promoted concerts at Lincoln Center and a letter from [REDACTED], a musician who asserts that the

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<sup>2</sup> According to Carnegie Hall's website, [www.caregiehall.org](http://www.caregiehall.org), the Weill Recital Hall seats 268 people, as opposed to the main stage at the Isaac Stern Auditorium that seats 2,804. The Weill Recital Hall is characterized as an "intimate auditorium ideal for recitals, chamber music concerts, symposia, discussions, master classes, and more."

petitioner performed at Lincoln Center in 1996. The record does not contain the program from the petitioner's performance at Lincoln Center or confirmation from Lincoln Center. Mr. [REDACTED] does not assert that he promoted the petitioner's performance at Lincoln Center and Mr. [REDACTED] appears to have no official affiliation with Lincoln Center. Finally, there is nothing about the photograph that demonstrates the petitioner is performing at Lincoln Center. As such, the petitioner has not established that she actually performed there and, if she did, whether she was a featured performer at one of their major auditoriums.

The remaining programs and promotional materials in the record are for performances at cultural events and an Indian casino. The petitioner has not established that these performances can be distinguished from the type of performances inherent to her field such that they can be considered exhibitions showcasing the petitioner's art.

In light of the above, the petitioner has not established that she meets this criterion.

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

While the petitioner performed at the Weill Recital Hall and claims to have performed at Lincoln Center, she did not provide box office receipts for these performances. Thus, she has not established that she meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a singer 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 indicates that the petitioner shows talent as a singer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.