

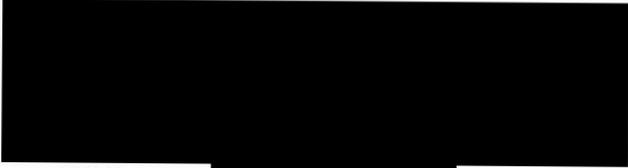


U.S. Citizenship
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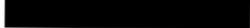
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FILE:



Office: TEXAS SERVICE CENTER

Date:

AUG 30 2007

SRC 05 263 50675

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:



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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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.

On appeal, counsel argues that the petitioner “has met the burden of section 203(b)(1)(A) of the Immigration and Nationality Act and 8 C.F.R. 204.5(h)(3) of the regulations.”

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. 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 earned sustained national or international acclaim at the very top level.

This petition, filed on September 28, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a choreographer and dancer. 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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 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 photocopies of the following:

1. Certificate from the “Fourth Zhejiang Province Music and Dance Festival” stating the petitioner “won the First Award for her Dance Performance.” (November 1993)
2. Certificate from the “Fifth Hangzhou City Culture and Arts Competition” stating that the petitioner “won the Second Award.” (December 1994)
3. Certificate jointly issued by the “Zhejiang Province Culture Department,” “Zhejiang Province Television,” and the “Zhejiang Province Dancers Association” stating that the petitioner “won the Outstanding Award at the 1995 Professional Dance Competition and ‘Solo, Duo, and Trio Dancers’ Selection Contest.” (February 1995)
4. Certificate stating that the petitioner “won the Second Award” for her “Folk Dance Performance at the Fourth National Dance Competition.” (November 1998)
5. Certificate stating that the petitioner “won the First Class Award at the 2001 Hangzhou City New Titles and Programs Category (Specialty).” (December 2001)
6. “Certificate of Honor” stating that the petitioner was “elected through evaluation to be one of the Ten Best Youth in Hangzhou City’s Culture System.” (January 25, 1995)
7. “Certificate of Honor” from the “Hangzhou City Culture Department Arts Committee” stating that the petitioner was “elected a Talented Artist in this Century and Next.” (September 1996)
8. Certificate bearing the seal of the Chinese Association of Dancers stating that the petitioner won a “Golden Lotus Award.” (June 1998)
9. Certificate bearing the seal of the Ministry of Culture, People’s Republic of China stating: “[The petitioner] won the Performance Art [sic] at the Ninth Culture Award Program.” (December 2002)

In addressing the petitioner’s awards, the director’s decision stated:

Information regarding the awards received was not provided. It is not clear the relevance and magnitude of the events where the [petitioner] participated. . . . The record does not contain any objective evidence regarding the significance of the awards, such as national media coverage of the announcement of the awardees.

We concur with the director's observations. Regarding items 1, 2, 3, 5, 6, and 7, there is no supporting evidence showing that these awards reflect national or international recognition rather than local or provincial recognition. Nor is there evidence showing that items 4, 8, and 9 commanded national or international recognition consistent with sustained national or international acclaim. The awards numbered 4, 8, and 9 were received seven and nearly three years before the petition was filed and are not indicative of sustained acclaim. Moreover, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of a given criterion. In this case, the petitioner has not shown that her awards had a significant level of recognition in her field beyond the presenting organizations.

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

The petitioner submitted a photocopy of her "First-Class Artist" license issued by "Zhejiang Provincial Human Resources" on December 15, 2002. We do not find that receiving a license to practice one's artistry from a provincial government is tantamount to membership in an association requiring outstanding achievements. There is no evidence demonstrating that obtaining this license required outstanding achievements in the performing arts, as judged by recognized national or international experts in the petitioner's field.

The petitioner also submitted a photocopy of her membership credential issued by the Zhejiang Province Dancers Association in 2000, but there is no supporting evidence that membership in this provincial association required outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

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

Published material 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 submitted several articles printed in Chinese language publications. There is no evidence that the preceding publications are professional or major trade publications or other major media. Further, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to 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 preceding articles were not accompanied by English language translations as required by both the regulation at 8 C.F.R. § 103.2(b)(3) and the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). On November 4, 2005, the director issued a notice requesting the petitioner to "[p]rovide English translation [sic] for the articles submitted." The petitioner's response failed to comply with the director's request.

The petitioner also submitted articles entitled “Chinese dancers get acrobatic: Youthful troupe tells folk stories with dance, music” and “First Community Concert Scheduled This Evening.” The date and author of these articles were not provided as required by the regulatory criterion, nor is there evidence that the articles appeared in professional or major trade publications or other major media. Further, the preceding two articles (neither of which mentions the petitioner’s name) are not primarily about her.

In addressing the evidence submitted by the petitioner, the director’s decision stated:

The petitioner did not provide an English translation of the articles submitted. To qualify as major media, the publication should have significant national circulation or distribution. It is the petitioner’s burden of proof not only to submit the article itself, but also evidence that establishes that it was published in a qualifying publication.

We concur with the director’s observations. The petitioner has not established that she meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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). For example, judging a national competition for professional dancers is of far greater probative value than judging a local competition for students.

The petitioner did not initially claim to meet this criterion. In response to the director’s request for evidence, the petitioner submitted a photocopy of a March 2003 credential issued by the “Committee of National Art Society for Testing Administration Group” identifying her as a “Second-Class Artist” and “Senior Examiner.” We note that the preceding March 2003 credential identifies the petitioner’s “Professional Title” as “Second-Class Artist.” This contradicts information contained in the license issued to the petitioner by Zhejiang Provincial Human Resources less than four months earlier on December 15, 2002, which identifies her “Professional Title” as “First-Class Artist.” 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 a January 24, 2006 letter responding to the director’s request for evidence, counsel argues that the above credentials identifying the petitioner as a “Senior Examiner” and “First-Class Artist” “entitle her to judge the

performance and qualifications of other artists.” The record, however, includes no evidence of the petitioner’s *participation*, either individually or on a panel, as a judge of the work of other artists. For example, there is no evidence of the names of the individuals evaluated by the petitioner, their level of expertise, the specific performances judged, or any other documentation of the petitioner’s assessments (such as judging slips, event programs identifying her as a judge, or correspondence confirming her participation). The record also lacks evidence establishing the significance of the events at which the petitioner allegedly served as a judge. Without evidence of the petitioner’s actual participation as a judge of the work of others in her or an allied field that is consistent with sustained national or international acclaim, we cannot conclude she meets this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

In the January 24, 2006 letter responding to the director’s request for evidence, counsel argues that the petitioner’s performances and awards meet this criterion. Counsel states:

[The petitioner’s] two major performances, “White Snake” and “Maiden Cutting Paper Flowers” have previously been documented in newspaper articles submitted in Exhibit 3. In addition, please see her award certificates for the performances, 1993 for “White Snake” and 1998 for “Maiden.” [The petitioner] also won national awards for her performances in 1998, “Lotus Award” and 2002, “Performance Art.”

As discussed previously, the articles printed in Chinese language publications were unaccompanied by complete, certified English language translations as required by the regulation 8 C.F.R. § 103.2(b)(3). This “published material” has already been addressed under the criterion at 8 C.F.R. § 204.5(h)(3)(iii). Further, we do not find that the petitioner’s awards and dance performances are relevant to the present criterion. The petitioner’s award certificates have previously been addressed under the “prizes or awards” criterion at 8 C.F.R. § 204.5(h)(3)(i) and her dance performances are more relevant to the “commercial successes in the performing arts” criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be addressed there. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards, commercial successes, and original artistic contributions of major significance, CIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

The petitioner also submitted two letters of support
Dance Salad, Houston, Texas, states:

Producer, Director, and Founder of

As senior dance director in HongZhou Song & Dance Performing Group for the past 10 years, [the petitioner] not only appeared as principal dancer in many performances, she also was responsible for coordinating and organizing dance operas to be presented in national events. With her abundant experiences in the dance field, she will bring so much new ideas and grace to the performing arts in Houston and United States.

letter does not identify the petitioner's specific performances or dance operas, nor does she explain how the petitioner's work rises to the level of an original artistic contribution of major significance in the field of dance.

Dance Coordinator, Northern Arizona University Preparatory School of Performing Arts, states:

Notably, [the petitioner] has established herself as one of the prominent performing artists in the field of Chinese folkloric and contemporary dance. Critics acclaimed her performance as unique and exquisite, embodying charm, grace, and spirit of the Chinese folkloric dance.

What I think equally distinguishes [the petitioner] is her choreographic originality and her academic contributions both evidenced by the lists in the resume.

The record, however, includes no copy of the petitioner's resume. Nevertheless, we do not find that reliance upon the self-serving information contained in the petitioner's resume is sufficient to demonstrate the purportedly major significance of her artistic or scholarly contributions.

In general, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. For example, vague statements attesting to an alien's standing and skill are less persuasive than specific examples of achievements. Similarly, experts who were previously aware of the alien's accomplishments through her reputation are more persuasive than experts who were previously unaware of the alien and are providing an opinion based on a review of the alien's resume as provided by the alien. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a choreographer or dancer who has sustained national or international acclaim.

In this case, the petitioner has not established that she has made original artistic contributions of major significance to her field in a manner consistent with sustained national or international acclaim. For example, the record does not indicate the extent of the petitioner's influence on other dancers nationally or internationally, nor does it show that the field has somehow changed as a result of her work. 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.

The petitioner submitted a digital video disc (DVD) entitled "Moon Light" showing her performance at a New Year gala hosted by China's Ministry of Culture. According to the accompanying English language

translation, the petitioner was one of more than a dozen dancers who appeared in the video recording. This DVD is far more relevant to the “commercial successes in the performing arts” criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be further addressed there. Even if we were to consider the petitioner’s DVD for the present criterion, we note that the plain language of this criterion requires participation in “exhibitions and showcases.” One such qualifying performance does not meet this requirement.

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

The petitioner submitted evidence showing that as part of the opening and closing ceremonies for the “Liquin Cup International Traditional Wushu and Unique Feasts Tournament” in 1999, she served as director and choreographer for acts entitled “Flying to the New Century” and “Happy Song.” According to the event program submitted by the petitioner, multiple acts performed at the Liquin Cup ceremonies. There is no evidence showing the relative importance of the petitioner’s role in relation to that of the directors of the other acts or that the Liquin Cup had a distinguished reputation. Further, we are not persuaded that the opening and closing ceremonies for an event constitute “organizations or establishments” for purposes of this criterion.

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner, however, has submitted no evidence showing that the dance companies for which she has worked have distinguished reputations or that she was responsible for their success or standing to a degree consistent with the meaning of “leading or critical role.”

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

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

The petitioner submitted a September 26, 2005 letter from [REDACTED] Houston, Texas stating that she “will be compensated at an annual salary of \$24,000.” In the January 24, 2006 response to the director’s request for evidence, counsel states: “Although a salary of \$24,000 is not significant in the US economy, it is a significant amount in China.” In support of counsel’s claim that \$24,000 is a “significant amount in China,” the petitioner submitted a June 1, 2001 article printed from the internet site of *ASIaweek.com* stating that dancers of the Chinese National Ballet have incomes which range “from \$3,400 to \$9,600.” This income information from 2001 for Chinese ballet dancers does not represent an appropriate basis for comparison. The salary information submitted by the petitioner from 2001 is not timely and there is no evidence that she has performed or choreographed “ballet.” Moreover, if the petitioner seeks to distinguish her remuneration from that of other Chinese dancers, then she must submit evidence of the salary she commanded while in China. The record, however, includes no such evidence. We find that evidence submitted in support this criterion must relate to acclaim in the country where the alien is said to have gained acclaim. For example, an alien who does not work in her country of origin must compare her salary with her colleagues in the country where she works, not her country of origin. In this instance, the petitioner submitted evidence of her \$24,000 salary in the United States. The petitioner, however, failed to

submit official wage statistics or other salary information as a basis for comparison showing that her compensation was significantly high in relation to other U.S. dancers or choreographers. There is no evidence that the petitioner has earned a level of compensation that places her among the highest paid dancers or choreographers in China or the United States consistent with sustained national or international acclaim. Thus, 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.

The petitioner submitted local newspaper articles showing that in 1987 she performed at the Hult Center in Eugene, Oregon and at the Elko Civic Auditorium in Elko, Nevada. The petitioner also submitted event programs from her various performances and the aforementioned "Moonlight" DVD. This criterion calls for commercial success in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated in various stage performances cannot meet the plain language of this criterion. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial success in the performing arts in a manner consistent with sustained national or international acclaim. For example, there is no indication 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. Thus, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Further, there is no objective evidence of achievements or recognition showing that the petitioner has sustained national or international acclaim as a dancer or choreographer subsequent to 2002.

Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition filed in her behalf in 2005. On appeal, counsel states: "[The petitioner] has been granted status as an O-1 non-immigrant alien of extraordinary ability. The same evidence submitted for her O-1 visa status should also meet the burden of proof in establishing her eligibility as an alien of extraordinary ability for an employment based immigrant." Counsel is mistaken. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines extraordinary ability as "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 evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's prior receipt of O-1 nonimmigrant classification is not evidence of her eligibility for immigrant classification as an alien with extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

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.