



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
EAC 05 075 50072

Office: VERMONT SERVICE CENTER

Date: JUN 01 2007

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:

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.

*fr*  
*Maura Deadrick*  
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.

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. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 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 as a Tianjin drum performer. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since January 10, 2001. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (almost four years), 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 musician 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. 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 the following:

1. "Certificate of Honor" from the Tianjin Television Station stating that the petitioner's drum performance was recognized as the "Audiences' Favorite Show" (January 28, 2000).
2. "Certificate of Honor" from the Tianjin Charity Association issued in appreciation of the petitioner's "support to the charity affair" (January 28, 2000).
3. Certificate issued by the "People's State of Tianjin City" conferring the petitioner with the title of "Outstanding Individual" in honor of his contributions to traditional Tianjin culture (December 1995).
4. Certificate from the Ministry of Culture of the People's Republic of China conferring the petitioner with the title of "Master of Tianjin Folk Arts" (February 1999).
5. Certificate from the Tianjin Artist Association stating that the petitioner "has made great achievements on the activity of 'Marching on the Land'" (May 4, 2000).
6. "Certificate of Honor" from the "Third International Folk Exhibition & Committee of the Second Trade Fair of Tianjin Folk Arts" stating that the petitioner's performance "'Tianjin Drum' . . . gained enormous success at the ceremony" (April 22, 2000).
7. Certificate from the "Committee of the First National Tianjin Folk Arts Exhibition" commending the petitioner for his performance "Jingyun Drum" at the opening sitting of the Tianjin Folk Arts Exhibition (October 8, 2000).

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 English language translations accompanying the petitioner's award certificates were not certified as required by the regulation.

In regard to items 1, 2, 3, and 5, we find that these awards reflect local recognition rather than national or international recognition. Regarding items 6 and 7, there is no evidence showing that these certificates are

nationally or internationally recognized awards for excellence, rather than simply an acknowledgment of the petitioner's participation in the exhibitions.

In regard to items 1 through 7, there is no evidence showing that these awards command a significant level of recognition. Further, the record includes no evidence that would demonstrate the number of awards given, the geographic area from which the individuals eligible for consideration for these awards were drawn from, the criteria for granting these awards, the level of expertise of those considered, and the number of individuals eligible to compete. 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 awards presented under this criterion enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or print media to establish that the petitioner's awards are nationally or internationally recognized awards.

In addition to the preceding deficiencies, there is no evidence showing that the petitioner has received any nationally or internationally recognized awards for excellence in music subsequent to 2000. The absence of such evidence indicates that the petitioner has not demonstrated sustained national or international acclaim since his entry into the United States.

In light of the above, the petitioner has not established that he 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 members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, 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 certificate of membership for the Chinese Artist Association (CAA) dated May 1991. The English language translation accompanying this certificate was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the record does not include the membership bylaws or the official admission requirements for the CAA. Nor is there evidence showing the duration of petitioner's membership or whether he remained active in this association in recent years.

In response to the director's request for evidence, the petitioner submitted a document entitled "Brief Introduction to the China Folk Literature and Art Association (CFLAA)." We cannot assign weight to this evidence because the English language translation accompanying this document was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the source of the document has not been identified and there is no indication that the CAA and the CFLAA are one in the same.

The evidence submitted by the petitioner fails to show that his admission to membership in the CAA required outstanding achievement or that he was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he 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.*

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. 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>1</sup>

In response to the director's request for evidence, the petitioner submitted an article allegedly published in the *Tianjin Daily* dated September 30, 2001. This article states that the "First Zhonghua (Tianjin) Folk Art Treasures Exposition" opened at the Tianjin Sport Center on the morning of September 30, 2001 and that the petitioner was a performer at the event. The author of the material has not been identified as required by this criterion, nor is the petitioner the primary subject of the article. Further, the English language translation accompanying the article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Finally, there are no circulation statistics showing that the *Tianjin Daily* qualifies as major media.

According to the petitioner's Form I-140, Immigrant Petition for Alien Worker, and Form I-485, Application to Register Permanent Residence or Adjust Status, his "Date of Last Arrival" in the United States was January 10, 2001. The *Tianjin Daily* article, however, indicates that the petitioner performed at the aforementioned exposition in China on September 30, 2001. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this instance, there is no independent and objective evidence to establish that the petitioner was present for this exposition in Tianjin, China in September 2001 rather than in the United States during that time.

The petitioner's response to the director's request for evidence also included an article entitled "Tianjin Charity Association sponsors 'Denoted [sic] fund to the disaster area'" allegedly published in *International On-line News*. The date of this material has not been provided as required by this criterion, nor is the petitioner the primary subject of the article. Further, there is no evidence showing that this publication qualifies as major media.

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<sup>1</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, for instance cannot serve to spread an individual's reputation outside of that county.

In addition to the preceding deficiencies, there is no evidence showing that the petitioner has received media coverage subsequent to 2001. The absence of such evidence indicates that the petitioner has not demonstrated sustained national or international acclaim in recent years.

In light of the above, the petitioner has not established that he 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 what is alleged to be an article he authored in the July 1998 issue of *Tianjin Opera Forum*. The English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that this publication qualifies as a professional or major trade publication or other major media.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or 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. Further, the petitioner has not submitted evidence of specific achievements establishing that he has sustained national or international acclaim as a musician since his arrival in the United States in 2001.

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 includes 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.