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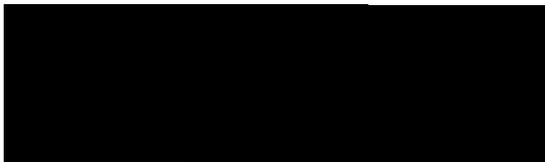


U.S. Citizenship
and Immigration
Services

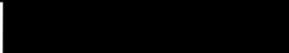
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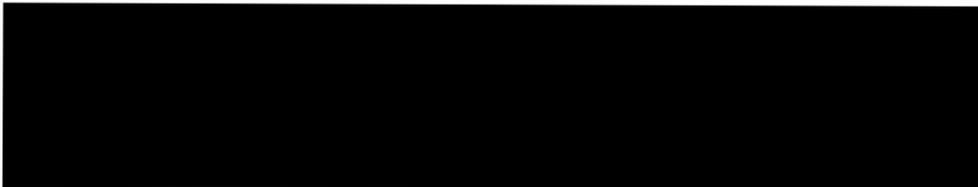
Petitioner:

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.

to *Maura Deadrach*
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 (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 that he qualifies 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. 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 April 15, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a Chinese Peking Opera actor. 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 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 two certificates from the Chinese Cultural Ministry indicating that he received "First Prize in the Pre-1997 National Peking Opera Performance Competition of 1996" and "First Prize of the National Chinese Peking Opera Performance Competition of 1998." 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 prize certificates do not meet these requirements.

The petitioner also submitted several photographs of Peking Opera Performers. These photographs are accompanied by captions that list the following prizes:

1. First Prize in National Beijing Opera Performance Competition
2. First Prize in CCTV (China Central Television) Golden Peking Opera Competition, 1995
3. Plum Prize in National Traditional Opera Competition, 1996
4. First Prize in National Opera Performance Competition, 1997
5. Golden Prize of Beijing Opera Performance in Chinese Culture Competition, 1998
6. First Prize in National Beijing Opera Competition, 1999

None of the photographs submitted by the petitioner demonstrates his receipt of the above prizes. The plain language of this criterion requires "documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence." The captions accompanying the performers' photographs represent claims by the petitioner rather than evidence of his receipt of prizes for excellence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regarding items 1 through 6 and the two prize certificates from the Chinese Cultural Ministry, there is no evidence such as media coverage surrounding these prizes, information identifying the number of recipients and the number of individuals eligible to compete, documentation reflecting the criteria for granting the prizes, information indicating the level of expertise of those considered, or documentation showing the geographic area from which the individuals eligible for consideration for the prizes were drawn or other evidence showing that the prizes command a substantial level of recognition.¹ The plain language of the

¹ For example, large-scale competitions typically issue event programs listing the order of events and the names of all of the participants. 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 in which he received prizes.

regulation at 8 C.F.R. § 204.5(h)(3)(i), however, specifically requires that the awards or prizes be nationally or internationally *recognized* and it is the petitioner's burden to establish every element of a given criterion. We further note that section 203(b)(1)(A)(i) of the Act requires "extensive documentation" of sustained national or international acclaim. Pursuant to the statute and regulations, the petitioner must provide adequate evidence to establish that the prizes presented under this criterion enjoy significant national or international stature. Simply alleging that a prize is nationally or internationally recognized cannot suffice to satisfy this criterion. See *Matter of Soffici*, 22 I&N Dec. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Contemporaneous evidence of national or international recognition associated with the prizes is of far greater probative value, particularly when the statute requires "extensive documentation" of sustained national or international acclaim. In this case, there is no documentation from the awarding entities or print media to establish that the petitioner's prizes are nationally or internationally recognized performing arts prizes.

In addition to the preceding deficiencies, there is no evidence showing that the petitioner has received any nationally or internationally recognized prizes for excellence subsequent to the 1990's. The absence of such evidence indicates that the petitioner has not sustained national or international acclaim in recent years.

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 letters of support indicating that he was a member of the National Peking Opera Society, the Chinese Traditional Opera Association, and the American Chinese Peking Opera Society.² The record, however, does not include the membership bylaws or the official admission requirements for these associations. As such, there is no evidence that admission to membership in these organizations required outstanding achievement or that the petitioner 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.

² None of these letters includes a telephone number through which these associations may be contacted.

In general, 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.³

A November 5, 2004 letter of support from the President of the American Chinese Peking Opera Society states: “Featured stories about [the petitioner] appeared on numerous newspapers including *Beijing Journal* and Hong Kong’s *Arts Journal*.” The record, however, includes no evidence to support this assertion. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires the petitioner to submit “published materials about the alien” rather than a letter of support attesting to their existence. The letter from the President of the American Chinese Peking Opera Society fails to satisfy the plain language of this criterion. For example, “the title, date, and author” of the newspaper articles were not provided. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner submitted letters of support allegedly issued by the President of the National Peking Opera Society, the President of the Chinese Traditional Opera Association, the President of the American Chinese Peking Opera Society, the President of the Qi Shufang Peking Opera Company, and the President of the Peking Opera House. These letters describe the petitioner as a talented performer, but they fail to specify an original artistic contribution of major significance in the performing arts field directly attributable to the petitioner. None of these letters includes a telephone number through which their authors may be contacted. Further, the letterhead from the Qi Shufang Peking Opera Company misspells Woodhaven, New York as “Woodheaven.” 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).

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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. **CIS may even give less weight to an opinion that is not**

³ 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.

corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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 performing artist who has sustained national or international acclaim. In this case, the record does not indicate the extent of the petitioner's influence on other actors, nor does it show that the field has somehow changed as a result of his work. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed, we cannot conclude that he meets this criterion.

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. Without further evidence, it cannot be determined that the petitioner is among the performers appearing in these photographs. Nevertheless, this particular criterion 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. Thus, the petitioner has not established that he 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.

This criterion calls for commercial success in the form of "sales" or "receipts"; simply submitting photographs or letters of support 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'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 he meets this criterion.

In this case, the petitioner has failed to demonstrate 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 acclaim necessary to qualify as an alien of extraordinary ability. Further, the record reflects that the petitioner has been residing in the United States since July 1999.⁴ Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect him to have earned national acclaim in the United States during that time. Although the petitioner has had ample time to establish a reputation as a performing artist in this country, there is no evidence showing that he has sustained national or international acclaim as a performing artist subsequent to his arrival in this country.

⁴ On March 11, 2004, the petitioner was granted advance parole in order to depart the United States temporarily. After a brief absence, the petitioner reentered the United States in May 2004.

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.

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.