



U.S. Citizenship  
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Services

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FILE: EAC 06 001 53101 Office: NEBRASKA SERVICE CENTER Date: **MAR 14 2008**

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.



*S* Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a finding of fraud and material misrepresentation.

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 meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that “the petitioner is an internationally renowned outstanding entertainer.”

On January 14, 2008, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he submitted falsified material in support of his petition. The notice specifically observed that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that “this petition and the evidence submitted with it are all true and correct.”

Regarding the fraudulent documentation, the AAO’s notice stated:

8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In support of the petition, you submitted photocopies of two Award Certifications from the “Third Art and Culture Festival in Chengdu City.” The October 1991 Award Certification states that you won an “Actor Prize” at the “Third Art and Cultural Festival in Chengdu City for [your] excellent performance” in “The Fairy of Blue Snake.” The 1997 Award Certification states that you received an “excellent performance” award at “the Third Art and Cultural Festival in Chengdu City” for your “Changing Faces and Fire Injecting from Mouth” show. The preceding awards were allegedly issued to you six years apart in 1991 and 1997, but they both state that they are from the “*Third* Art and Cultural Festival in Chengdu City.” [Emphasis added] By submitting these conflicting award certificates, it appears you have sought to obtain a visa by fraud and willful misrepresentation of a material fact. 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 a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

If you choose to contest the AAO’s finding, you must offer independent and objective evidence from credible sources addressing, explaining, and rebutting the discrepancy described above. If you do not submit such evidence within the allotted thirty-day period, the AAO will dismiss your appeal.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was also requested to submit originals of the following:

1. October 1991 “Award Certification” stating that the petitioner won an “Actor Prize” at the “Third Art and Cultural Festival in Chengdu City for his excellent performance” in “The Fairy of Blue Snake.”
2. 1997 “Award Certification” stating that the petitioner received an “excellent performance” award at “the Third Art and Cultural Festival in Chengdu City” for his “Changing Faces and Fire Injecting from Mouth” show.
3. September 1985 “Award Certification” issued by the Cheng Du City Culture Bureau stating that the petitioner was awarded a “First Place Prize in the Youth Performance Competition of the Sichuan Opera held in Chengdu City in 1985 for his excellent performance.”
4. September 1997 certificate bearing the seal of the “China Tourism and Culture Festival and the Organizing Committee of Guang Dong Carnival” stating: “The [19]97 China and Tourism and Culture Festival and the Organizing Committee of Guang Dong Carnival hereby awarded you this Certificate to thank you for your contribution to the activity of ‘Developing and Spreading the Chinese Culture, Promoting the Development of Tourism Industry.’”

In accordance with the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded 30 days (plus 3 days for mailing) in which to respond to the AAO’s notice.

In response, the petitioner submitted a February 6, 2008 letter stating:

In April 2005, I came to the United States . . . . That year I gave the originals of my resume of my art career, my occupational title, and my awards to my lawyer and had him sent [sic] these documents to the U.S.C.I.S. to apply for Extraordinary Ability Green Card. Now, I no longer have these originals, so I only have some photos to attached [sic] within.

The petitioner’s response did not include the originals of the four award certificates requested by the AAO, nor does the record reflect that counsel ever sent the originals to Citizenship and Immigration Services (CIS) in support of the petition.<sup>1</sup> Further, the photographs submitted by the petitioner do not show any of the four award certificates. Regarding the petitioner’s failure to submit the requested original documents, the regulation at 8 C.F.R. § 103.2(b)(5) provides: “Failure to submit the requested original document by the deadline may result in denial or revocation of the underlying application or benefit.” Accordingly, this petition cannot be approved.

The petitioner’s response included an October 2, 1988 playbill listing him as a performer of the “Chuan Opera House of Cotton Rose of Chengdu City,” a letter of support from [REDACTED] and evidence of cultural performances given by the petitioner here in the United States. However, none of this documentation addresses the conflicting award certificates from the “Third Art and Cultural Festival in Chengdu City” bearing issue dates of 1991 and 1997. The petitioner’s response includes no independent and objective evidence to overcome the AAO’s finding that he submitted falsified material in support of the petition.

Section 212(a)(6)(C) of the Act provides:

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The record reflects that photocopies of the award certificates were submitted at the time of filing and in response to the director’s request for evidence.

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

By filing the instant petition and submitting the conflicting evidence described above, the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documentation in support of the petition, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner’s failure to submit requested evidence precludes approval of the petition. 8 C.F.R. § 103.2(b)(5). In addition, the petitioner’s failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. As stated above, 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. *See Matter of Ho*, 19 I&N Dec. at 591. Even if the petitioner had submitted originals, the petition could not be approved because the petitioner failed to establish eligibility for the requested classification.

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.

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, 60898-99 (Nov. 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 September 28, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an “Actor of Sichuan Opera.” 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 a September 1985 “Award Certification” issued by the Cheng Du City Culture Bureau stating that he was awarded a “First Place Prize in the *Youth* Performance Competition of the Sichuan Opera held in Chengdu City in 1985 for his excellent performance.” [Emphasis added] This award reflects local recognition rather than national or international recognition. Further, this award is limited by its terms to “youth” performers and thus excludes more experienced and established actors from consideration. As such, the petitioner’s receipt of a youth award is not an indication that he “is one of that small percentage who have risen to the very top of the field of endeavor very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Aside from the preceding deficiencies, we cannot ignore that the petitioner was over 30 years old at the time he received this “youth” performance award.<sup>2</sup> The petitioner’s age at the time he received this award contradicts the plain language of the award.

As discussed previously, the petitioner submitted an October 1991 “Award Certification” stating that he won an “Actor Prize” at the “Third Art and Cultural Festival in Chengdu City for his excellent performance” in “The Fairy of Blue Snake.” The petitioner also submitted a 1997 “Award Certification” stating that he received an “excellent performance” award at “the Third Art and Cultural Festival in Chengdu City” for his

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<sup>2</sup>The record reflects that the petitioner was born on July 25, 1955.

“Changing Faces and Fire Injecting from Mouth” show. These awards reflect local recognition rather than national or international recognition. Further, although the preceding awards were allegedly issued to the petitioner six years apart in 1991 and 1997, they both state that they are from the “Third Art and Cultural Festival in Chengdu City.” The different years for these awards contradict their inscription that they are both from the “Third Art and Cultural Festival in Chengdu City.”

On January 14, 2008, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner that his submission of conflicting award certificates from the “Third Art and Cultural Festival in Chengdu City” indicated that he had sought to obtain a visa by fraud and willful misrepresentation of a material fact. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO’s finding.

With regard to the 1991 and 1997 award certificates from the “Third Art and Cultural Festival in Chengdu City” and the “youth” performance award received by the petitioner in 1985 at the age of thirty, 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. at 582, 591-92. 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. *Id.* at 591.

The petitioner also submitted a September 1997 certificate bearing the seal of the “China Tourism and Culture Festival and the Organizing Committee of Guang Dong Carnival” stating: “The [19]97 China and Tourism and Culture Festival and the Organizing Committee of Guang Dong Carnival hereby awarded you this Certificate to thank you for your contribution to the activity of ‘Developing and Spreading the Chinese Culture, Promoting the Development of Tourism Industry.’” There is no evidence showing that this certificate is a nationally or internationally recognized award for excellence in the performing arts, rather than simply an acknowledgment of the petitioner’s participation in cultural activities at the festival or carnival.

As discussed previously, on January 14, 2008, this office issued a notice requesting the petitioner to submit the originals of the preceding four award certificates. The petitioner failed to submit the requested documentation. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner’s failure to comply with the AAO’s request for the originals of these award certificates constitutes grounds for denial of the petition.

In response to the director’s request for evidence, the petitioner submitted a “Special Award” from the “National Drama Stunt Show” dated October 1998. The record, however, contains no evidence establishing the significance and magnitude of the preceding show. 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 his burden to establish every element of this criterion. There is no evidence showing that the preceding award commanded national or international recognition consistent with sustained national or international acclaim.

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 an "Actor Certificate" issued in December 1998 stating: "This is to certify that the credential holder is up to the tenure of the corresponding professional and technical position described in the Proposed Regulations issued by the state and therefore has full qualifications for the corresponding professional and technical position." The English language translation accompanying this certificate states that the issuing organization is "not legible." On appeal, counsel argues that the preceding certificate meets this criterion. The documentation submitted by the petitioner, however, fails to specify the name of the association in which the petitioner claims membership or its specific admission requirements. We cannot conclude that possessing an employment qualifications certificate is tantamount to membership in an association in the field requiring outstanding achievement.

In this case, there is no evidence showing that the petitioner holds membership in associations in the field requiring outstanding achievements of their members, as judged by recognized national or international experts in his field or an allied one. As such, the petitioner has not established that he 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.*

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 level from a local publication or from a publication printed in a language that the vast majority of the country's population cannot comprehend. 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>3</sup>

In response to the director's request for evidence and on appeal, the petitioner submitted articles dated October 19, 2005, July 11, 2006, and October 5, 2006 in the *World Journal*. The petitioner also submitted an

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<sup>3</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.

article dated March 23, 2006 in the *Epoch Times* and an article dated September 28, 2006 in the *New Jersey Weekly Journal*. The authors of these Chinese-language articles were not identified as required by the plain language of this regulatory criterion. 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 accompanied by only partial English language translations rather than full translations as required by 8 C.F.R. § 103.2(b)(3); therefore, it cannot be determined that the articles were primarily about the petitioner. Further, there is no evidence (such as circulation statistics) showing that the preceding publications qualify as professional or major trade publications or other form of major media. Coverage in a publication read by only a small ethnic segment of a country's total population is not evidence of national or international acclaim. Nevertheless, the preceding articles were all published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the AAO will not consider these articles in this proceeding.

In light of the above, the petitioner has not established that he 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 contest for professional performers is of far greater probative value than judging a local competition for amateurs.

On appeal, the petitioner submits a judging credential dated 2006 from the Chinese Festival Association of New Jersey. There is no evidence showing the specific events the petitioner judged, the names of the individuals he evaluated, their level of expertise, or any other documentation of his assessments (such as a judge's scoring sheet). Nor is there evidence establishing the level of prestige associated with judging events run by the Chinese Festival Association of New Jersey. Nevertheless, the preceding credential was issued to the petitioner subsequent to the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. Accordingly, the AAO will not consider this credential in this proceeding.

In light of the above, the petitioner has not established 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 photographs, reference letters, event programs, and a DVD (digital video disc) showing that he took part in various stage performances. For example, on appeal the petitioner submits an event program from the 2006 Chinese Cultural Festival reflecting that he performed “Changing Face” and “Spitting Fire” routines at Battery Park in New York on September 16, 2006. The preceding performance at Battery Park occurred subsequent to the petition’s filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. Accordingly, the AAO will not consider this performance in this proceeding.

The plain language of this criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. In the performing arts, sustained national or international acclaim is generally not established merely by performing in public, but rather by consistently attracting a substantial national or international audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner’s performances are far more relevant to the “commercial successes in the performing arts” criterion at 8 C.F.R. § 204.5(h)(3)(x). Nevertheless, there is no evidence establishing that the petitioner’s level of performance or artistic venues are consistent with sustained national or international acclaim at the very top of his field. As such, the petitioner has not established that he meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted reference letters from the [REDACTED], President of the Fu Rong Hua Sichuan Opera Theater Group, and [REDACTED], President of the Sichuan Opera Institute. On appeal, the petitioner submits a letter from the China Chengdu Lotus Chuan Opera indicating his monthly salary. These three letters include no address, telephone number, or any other information through which their authors may be contacted. The letter from [REDACTED] states that the petitioner “was assigned the role of protagonist in plays and shows performed by the Fu Rong Hua Sichuan Opera Theater Group,” but there is no supporting evidence to establish that the petitioner’s role for the troupe was leading or critical. For example, there is no evidence showing that the petitioner’s name frequently received top billing or that the popularity of the troupe increased when the petitioner was known to be performing. Nor is there evidence demonstrating how the petitioner’s role differentiated him from the other performers employed by the Fu Rong Hua Sichuan Opera Theater Group or the China Chengdu Lotus Chuan Opera troupe. As such, the petitioner has not established that he was responsible for his troupes’ success or standing to a degree consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim. Further, there is no evidence showing that the organizations for which the petitioner has worked have distinguished reputations.

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

On appeal, the petitioner submits two letters attesting to his monthly salary in China, but these letters include no address, telephone number, or any other information through which their authors may be contacted. The petitioner also submits a People's Republic of China income tax form for October 2004 and a bank account transaction statement for January 2005 to March 2005. The plain language of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field.

In light of the above, 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.*

On appeal, counsel argues that the petitioner's October 2004 income tax form and bank account transaction statement for the first quarter of 2005 show that "the petitioner obtained commercial success." These documents have already been addressed under the previous regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ix). The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(x) calls for evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence of the petitioner's monthly income, three months of his bank account transactions, or that he participated in Chinese opera performances and other cultural events cannot satisfy this criterion. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes 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 consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Nor is there evidence showing, for example, that the DVD featuring the petitioner's performance had a high national or international sales volume.

In light of the above, 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 at 8 C.F.R. § 204.5(h)(3).

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.

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. Nor is there clear

evidence that the petitioner will continue working in his area of expertise. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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). The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 with a finding of fraud and willful misrepresentation of a material fact.

**FURTHER ORDER:** The AAO finds that the petitioner knowingly submitted fraudulent documentation in an effort to mislead CIS and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States.