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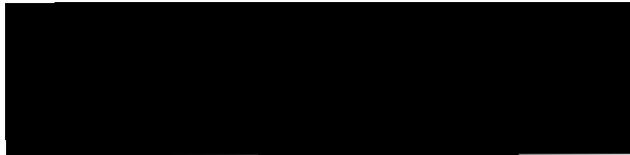
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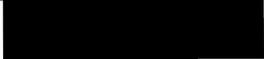
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FILE:



OFFICE: VERMONT SERVICE CENTER

Date:

NOV 10 2008

EAC 05 214 51735

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:

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.

Robert P. Wiemann, Chief
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 that the petitioner had not established she is one of that small percentage who have risen to the very top of the field of endeavor.

On appeal, the petitioner argues that she qualifies 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 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. *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 she has sustained national or international acclaim at the very top level.

This petition, filed on July 22, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a folk artist and fashion designer. The statute and regulations require the petitioner's national or international acclaim to be sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Although the petitioner has been residing in the United States since October 2000, there is no evidence establishing that she has sustained national acclaim as a folk artist or fashion designer in this country. Further, there is no evidence showing that the petitioner's acclaim in China has been sustained

during the four years preceding the filing of this petition. The record includes a photocopy of the petitioner's Chinese passport issued by the Ministry of Foreign Affairs of the People's Republic of China on May 15, 2000. Interestingly, under "Profession," the passport identifies the petitioner as a "Teacher," despite her claim that she is nationally acclaimed in China as a folk artist and fashion designer. 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.

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.¹

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 stating that the petitioner "won the golden award in the practical group of the [redacted] fourth [C]hina cloth design competition" (November 2002).
2. Certificate of Honor stating that the petitioner "won second place" in the "new century [redacted] Student uniform design competition" (October 18, 2000).
3. Certificate stating that the petitioner received a "Special Outstanding Award" issued by the China Youth Newspaper, the Education Department of Communist Youth League, the China Department of Education Students Employment Information and Training Center, and the China Science Association Folk Educators Fraternity (August 2000).
4. Certificate of Honor stating that the petitioner received an "Enrollment Award" in the "'Festival Cloth' Group" at the "First China Folk Style Cloth and Decoration Exhibition 'Kung Ming Cup' Folk Style Fashion Design competition" (August 7, 2000).
5. Certificate of Honor stating that the petitioner received an "Enrollment Award" in the "'Korean Cloth' Group" at the "First China Folk Style Cloth and Decoration Exhibition 'Kung Ming Cup' Folk Style Fashion Design competition" (August 6, 2000).

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

6. Bronze medal from the "Fashion Culture Knowledge Competition (China)" (March 9, 2000).
7. "Best Style Award" medal from the "Fashion Culture Knowledge Competition (China)" (March 9, 2000).
8. Certificate stating that the petitioner received an "Outstanding Award" at the "4th Art Festival of Jilin Province" (1998).
9. Certificate of Honor stating that the petitioner won first prize at the first Jilin Province Art Festival (October 7, 1989).
10. Honor Certificate stating: "The Television Series *Dandelions*, which [the petitioner] worked as a clothing designer has received the Outstanding Award during the First East North Three Province Television Golden Tiger Award Appraisal" (March 14, 1987).
11. Certificate of Honor from the Chinese Artist Association recognizing the petitioner as an "Outstanding Artist" (October 2000).
12. Certificate of Honor from the China Workers' Union recognizing the petitioner as a "National Outstanding Individual" (April 1995).

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 certificates and medals were not certified by the translator as required by the regulation.

With regard to item 1, we note that this certificate was issued in Xintang, China in November 2002. However, according to the petitioner's entry stamp in her passport, her Form I-140, Immigrant Petition for Alien Worker, and her Form I-485, Application to Register Permanent Residence or Adjust Status, her "Date of Last Arrival" in the United States was October 26, 2000. There is no evidence establishing that the petitioner was present in Xintang, China for this competition in November 2002. As discussed, 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.

Items 2 and 3 were limited by their terms to youths and students. The plain language of this regulatory criterion requires "prizes or awards for excellence in the field of endeavor." Therefore, the petitioner must demonstrate that the competitions she won were open to artists and designers already working in the field rather than limited to youths or students. The petitioner's receipt of prizes restricted to youths and students is not an indication that she "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

Regarding items 4 and 5, 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. With regard to items 8, 9, 10, we find that these awards reflect provincial recognition rather than national or international recognition.

In response to the director's request for evidence, the petitioner submitted a document entitled "China Cloth Design Competition Organize Committee." On appeal, the petitioner submits documents that provide general information regarding the Chinese Workers' Union and the Chinese Artist Association. The English language translations accompanying these documents were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, these documents do not establish that the awards the preceding organizations presented to the petitioner were nationally or internationally recognized awards for excellence in her field.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* and it is her burden to establish every element of a given criterion. In this case, the petitioner has not shown that items 1 through 12 commanded significant recognition beyond the presenting organizations consistent with sustained national or international acclaim. For example, there is no evidence such as national press coverage announcing recipients of the preceding awards or other evidence showing that they have a substantial level of recognition.

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.

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. 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.²

The petitioner submitted an article entitled "2004 'the Dalian cup' youth fashionable clothing design competition (finals) makes known." The English language translation accompanying the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). According to the uncertified translation of the article submitted by the petitioner, her work won first prize in the Dalian Cup "youth" fashion design competition in September 2004 at the "Dalian Shangrila hotel" in China.³ The record reflects that the petitioner was born on August 26, 1957. We cannot ignore that the petitioner was 47 years old and residing in the United States at the time she allegedly won this "youth" competition in China. The petitioner's age and presence in the United States at the time of this competition contradict the content of the article. As discussed, 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

² 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.

³ The petitioner submitted twelve awards for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), but the first prize from the 2004 Dalian Cup youth fashion design competition in 2004 was not among them.

competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582, 591-92. Further, the name of the publication, its date, and the author of the article were not provided as required by the plain language of this regulatory criterion. Nor is there evidence (such as circulation statistics) showing that the article was in a professional or major trade publication or some other form of major media.

The petitioner also submitted an article entitled “The feather robe secondary rainbow clothes, the time overflows the color.” The English language translation accompanying the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). According to the uncertified translation of the article submitted by the petitioner, her work won first place in the “San Li Cups” fashion design competition on November 20, 2004 in Beijing.⁴ The petitioner’s presence in the United States at the time of this competition contradicts the content of the article. As discussed, 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. Further, there is no evidence showing that the article was in a professional or major trade publication or some other form of major media.

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

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted what she alleges are two articles she authored for the May 12, 1998 issue of *Yanji Daily News*. The English language translations accompanying these articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that *Yanji Daily News* is a professional or major trade publication or some other form of major media. As such, 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 what she alleges are photographic images of her fashion designs on display. These images were unaccompanied by evidence (such as an event program) identifying the specific artistic exhibition or showcase in which the petitioner’s works appeared. In this case, there is no evidence demonstrating that the petitioner’s creations have been displayed at significant artistic venues consistent with sustained national or international acclaim at the very top of her field. As such, the petitioner has not established that she meets this criterion.

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

The petitioner submitted a certificate identifying her as an employee of the “Yanbian Song-and-Dance Group,” but there is no supporting evidence showing that the group has a distinguished reputation. Further,

⁴ The petitioner submitted twelve awards for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), but a first place award from the 2004 San Li Cups fashion design competition in 2004 was not among them.

there is no evidence showing that the petitioner's role for the group was leading or critical. For example, the record lacks evidence demonstrating how the petitioner's role differentiated her from the other artists and designers employed by the group, let alone the more senior leaders in the organization. There is no evidence establishing that the petitioner was responsible for the Yanbian Song-and-Dance Group's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

In this case, the petitioner has failed to demonstrate her 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 evidence showing that the petitioner's national or international acclaim has been sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record includes no evidence of nationally or internationally acclaimed achievements and recognition subsequent to her arrival in the United States in October 2000.

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 does not include such evidence.

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. Nor is there clear evidence showing that the petitioner will continue work in her area of expertise in the United States. 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 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.