U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 20 2004

IN RE: Petitioner: [redacted]
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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent [illegible] invasion of [illegible] privacy

PUBLIC COPY

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 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.

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 field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has earned sustained national or international acclaim at the very top level.

This petition, filed on September 4, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese Peking Opera Actress."

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 a certificate, dated August 15, 1998, with an accompanying English language translation indicating that she won an "Excellent Qing-Yi Award" in the "1998 National Contest of Traditional Opera Performers." The petitioner submitted another certificate from that same date (with an accompanying translation) indicating that she "won the Excellent Prize of Qing-Yi group in the National Traditional Opera Competition of Stage Performance in 1998." The difference between the "Excellent Qing-Yi Award" and the "Excellent Prize of Qing Yi group," if any, has not been adequately explained by the petitioner.

The petitioner also submitted a certificate and accompanying translation stating that a play in which she participated won an "Excellent Performance Award in the National Peking Opera Joint Show of 1997." The record contains no evidence to show that the petitioner played a leading role in this play or that the award was attributable to her individual performance.

Also submitted was a certificate and accompanying translation indicating that the petitioner "was awarded for her contribution in the Third National Peking Opera Competition and Local Traditional Opera Performance Competition" (1995). The petitioner offers no evidence to show that this certificate is a nationally or internationally recognized award, rather than simply an acknowledgment of her participation in this competition.

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services 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 translations accompanying the petitioner's award certificates were not certified as required by the regulation.

The record contains no evidence of publicity surrounding the above competitions or evidence showing that the petitioner's awards enjoy significant recognition beyond the context of the event where they were presented. The level of recognition associated with the preceding certificates is not self-evident. Simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. The petitioner must provide evidence to establish that her awards enjoy significant national or international stature. In this case, the record contains no documentation from the awarding entities or print media to establish that the above certificates are nationally recognized performing arts awards.

In addressing the preceding awards, the director's decision noted that the record contained "no evidence of the criteria used to select the winner[s], nor of the size of the pool of candidates from which the winner[s] [were] chosen."

On appeal, the petitioner addresses the director's observation stating:

> First, it is difficult to have the evidence of the criteria used to select the winner in 1998 Great Award Competition of Peking Opera [sic]. Peking Opera is a traditional art not only in China, but also in the world. It is very difficult to set up a criteria system for determination of the best. Almost all of the experts told me that they decided the level of candidate by several aspects such as style, singing, dance, action, etc. About the size of the pool of candidates from which the winner, I checked with some

> experts of the selection committee, they told me there had 2-3 professional performers from every big city of China; and there had 2-3 amateur performers from the same place [sic]. So, at that time, totally there had 90-110 professional performers took part in the competition [sic].

The record contains no evidence to support the petitioner's assertions regarding the 1998 competition. Letters from the "experts" with whom the petitioner spoke regarding the selection criteria, or the size of the pool of candidates, have not been provided. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant performing arts awards subsequent to 1998. The absence of such awards suggests that the petitioner has not sustained whatever acclaim she may have earned in China.

> *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, a fixed minimum of education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. In addition, membership in an association that evaluates its membership applications at the local or provincial level would not qualify. It is clear from the regulatory language that members must be selected at the national or international level, rather than the local. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Documentation accompanying the petition included evidence of the petitioner's membership in the World Association of Beauty Culture (New York), Artist Association of Fujian Province, and the Association of Chinese Artists. We note that the Artist Association of Fujian Province and the World Association of Beauty Culture (New York) appear to be provincial or local (rather than national or international) associations. In regard to all three organizations, the record contains no evidence of their bylaws or membership requirements to demonstrate that they require outstanding achievement in the performing arts. Assertions from the petitioner regarding the exclusive nature of their membership requirements are not adequate to satisfy the "extensive documentation" requirement for this classification set forth at section 203(b)(1)(A)(i) of the Act. *See also Matter of Treasure Craft of California.*

On appeal, the petitioner states: "I am applying the copy of selection rule from the Association of Chinese Artist [sic]. It is on going but need several weeks [sic]." More than ten months after the petitioner filed the appeal, the AAO has received nothing further. The record contains no evidence of the membership criteria for the associations to which the petitioner belonged.

In view of the foregoing, it has not been established that the petitioner's membership in the above associations required outstanding achievement or that her admission to membership was evaluated by experts at the national or international level.

> *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 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.

The record contains two articles appearing in *Chinese Peking Opera* in 1996. The first article, entitled "Stars of Peking Opera, Always Shining," discusses numerous performers and devotes less than ten sentences to the petitioner. The first article states: "Experts hoped that she continues her study, learns more early plays of Zhang and those of other class to widen her style and to promote stage performance. She needs more study in understanding of character sentiments to be a true inheritor and developer of Zhang Class." Such comments are not an indication that the petitioner is one of that small percentage who has risen to the very top of her field of endeavor. We further note that the record contains no evidence indicating the national or international circulation of *Chinese Peking Opera*. Without evidence that this magazine qualifies as major media, or evidence showing that the petitioner has been the primary subject of articles published subsequent to 1996, we do not find that the petitioner has earned sustained national or international acclaim.

> *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.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, the petitioner must demonstrate that her sustained national or international acclaim resulted in her selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level and involve accomplished professionals in the petitioner's field. For example, evaluating professional entrants in a national contest would carry far greater weight than serving as a judge at a local amateur competition.

The record contains a handwritten letter, purportedly from [redacted] Vice Chairman of the Association of Chinese Artists [redacted] states:

> I certify hereby that [the petitioner] was once a member of Fujian Province Artist Professional Title Evaluation Committee in August 1994.... Artist professional title evaluation is a very strict and high level evaluation, in a scrupulous style of work about every detail, on the premise of being a professional talent very familiar with the work and having studied [sic]. So the Fuzhou City professional title evaluation work of artistic talent of Fujian Province in August 1999 was smoothly completed [sic]. During this period, [the petitioner] put forward many pieces of precious advice to the evaluation committee.

According to Jun Liu's letter, the petitioner served as an evaluator at the provincial, rather than the national or international, level. The record contains no evidence showing that the petitioner has ever served as a judge of artistic performances at the national or international level.

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

On appeal, the petitioner submits an article she authored, entitled "A Fire in Winter," which appeared in *Chinese Peking Opera* in 1996. We note here that on December 27, 2002, the director issued a notice that specifically requested the petitioner to provide evidence under this criterion. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Even if we were to accept the article authored by the petitioner, it was unaccompanied by evidence (from an objective source such as a media guide, for example) indicating the national or international circulation of the magazine edition in which the article appeared. Nor is there any supporting evidence showing that the petitioner's article is widely viewed throughout her field as significantly influential.

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." Subsequent to her arrival in the United States in 2001, there is no evidence showing that the petitioner's primary occupation in this country involves Peking Opera. For example, there is no documentation showing that the petitioner has regularly taken part in performances here in the United States.

For the reasons discussed above, the record is ambiguous regarding the petitioner's acclaim throughout her native China, and there is no evidence showing that the petitioner has sustained whatever acclaim she earned in China since her arrival in the United States. Nor has the petitioner adequately demonstrated that she will "continue work in the area of expertise."

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that she 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.

Review of the record does not establish that the petitioner has distinguished herself as a performer 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 his field. The evidence is not persuasive that the petitioner's achievements set her

significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.