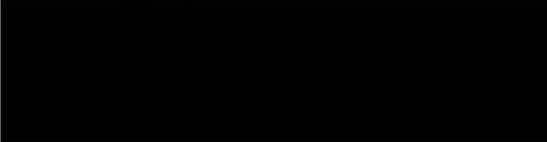


**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



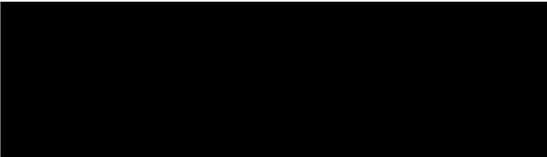
*BZ*

FILE: WAC 03 171 51877 Office: CALIFORNIA SERVICE CENTER Date: **OCT 28 2005**

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.

*Maiperson*

*g* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability 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. Specifically, while not all of the director's discussions reach a conclusion, the director appears to have concluded that the petitioner does not meet any of the regulatory criteria.

On appeal, counsel submits a brief and additional evidence. While we concur with some of counsel's assertions, we find that the petitioner has not established that he meets more than two of the regulatory criteria. An alien must meet three to establish eligibility. As such, we must dismiss the appeal.

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 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 seeks to classify the petitioner as an alien with extraordinary ability as a television producer. 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 that, he claims, meets the following criteria.<sup>1</sup>

*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 evidence that the China TV Drama Production Center received Apsaras and Junma awards for several dramatic series. The petitioner also submitted a certificate from China Central Television (CCTV) confirming that he was the playwright and producer for the award-winning dramatic series. In response to the director's request for additional evidence, the petitioner submitted materials from the CCTV affirming that the Apsaras Awards competition is sponsored by the Ministry of Radio Film and Television of China and that the award "is also the most authoritative and fairest classic award." The petitioner submitted the results for some of the previous years, reflecting that the Apsaras does recognize outstanding playwrights, but not producers. The petitioner also submitted materials about the Junma Awards, authorized by the State Central Propaganda Bureau. The award lists reflect that the awards are presented to the producing union.

The director concluded that the awards could not serve to meet this criterion because the petitioner did not receive them himself. On appeal, counsel asserts that China is a "collective system" where any work performed "is credited to the workplace or organization, particularly with work accomplished with government funds." Counsel notes that the petitioner has provided evidence affirming his role as producer and playwright and concludes that the petitioner "has presented convincing evidence that these awards were presented to CCTV China Drama Production Center for [the petitioner's] outstanding contributions."

Contrary to counsel's appellate assertion, the Apsaras Awards do recognize individual achievement. Specifically, there are awards for outstanding playwright and outstanding director, among others. The petitioner has not submitted any evidence that he received any awards as an outstanding playwright. Moreover, the petitioner has not documented the nature of the role of producer for a state-run and state-financed production. Thus, we concur with the director that the awards submitted do not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i), which requires documentation of the *alien's* receipt of awards or prizes.

*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.*

The petitioner submitted evidence of his membership in the China TV Artists Association and the Chinese Writers Association. The director did not address this criterion in his request for additional evidence. Thus, the petitioner's response to that request also did not address this criterion. In his final decision, the director concluded that the petitioner had not established that the above associations require outstanding achievements of their members. On appeal, the petitioner submits the membership requirements for the China TV Artists Association and the Bylaws of the Chinese Writers Association.

To apply for membership in the China TV Artists Association, an applicant must:

---

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

- a) Initiatively joint [sic] the practice of flourishing socialist TV arts;
- b) [Be] TV arts workers who have been engaged in the administration of creation, production, education, research, criticism, translation, broadcast and organization in different fields of TV arts business; has senior high professional technical rank and deputy high professional technical rank; or has public recognized [sic] high level TV arts production that won national or provincial awards; and
- c) Actively support this association, enthusiastically promote TV arts business, has certain achievements in TV arts, has certain influence.

An application must be supported by recommendations from two or more members and is evaluated by a “group of chairmen authorized department.” The minimum membership requirements appear to require no more than a specific technical rank in the field in addition to participating in the field and supporting the goals of the association. While holding a senior position in the field may represent one’s experience and skill, we do not find it to be an outstanding achievement. Moreover, the other materials about the association submitted on appeal reflect that it is a “professional organization.” These materials further provide:

[The] China TV Artists Association absorbs TV artists, theorists, critics, and professionals and scholars who have achievements in the TV arts education and editing business in the nation to be members. It currently has about 5000 members. All provincial, autonomous regions and municipal cities’ TV Artists Associations are group members of [the] China TV Artists Association. All the group members will absorb their individual members locally.

A professional organization is not typically competitive, requiring little more than an ability to succeed in the field. Undefined “achievements” are not necessarily outstanding achievements. Regarding the selection of members, the record does not establish that the “group of chairmen authorized department” consists of recognized national or international experts in their discipline. Thus, the petitioner’s membership in the China TV Artists Association cannot serve to meet this criterion.

The Bylaws of the China Writers Association also indicate that it is a “professional organization.” Regarding membership:

Those who agree to the association rules as regulations and have published considerably [sic] literacy [sic] work, theoretical research, and translations or have obtained outstanding achievements in literacy editing, education and organization can apply for membership. They must apply individually, be recommended by [a] writers association of respective provinces, autonomous region[s] and municipal cities directly under the central government and referred by two members of the association upon to [sic] approval by the office of the general secretaries; they become the members of this association.

We note that the requirements include an “or” before outstanding achievements in editing, education and organization. Thus, merely publishing one’s work is sufficient. It is inherent to making a living in the field of writing to publish one’s work. As such, it is not an outstanding achievement. Thus, the petitioner’s membership in the China Writers Association also fails to satisfy this criterion.

In light of the above, the petitioner has not overcome the director’s finding that the petitioner has not demonstrated eligibility under 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.*

The petitioner submitted an interview with him published in an unidentified and undated newspaper; an untranslated 1994 article in *Art Weekly*; an article about the production of a television drama produced by the petitioner that does not mention him by name in an unidentified and undated newspaper; an article about the petitioner in the September 18, 1994 issue of *Drama Movie and TV Journal*; an article about the petitioner's adaptation of a novel in the March 26, 2001 issue of the *Beijing Evening News* and articles from 2003 about a television series, produced by the petitioner and being filmed in the United States appearing in three Chinese-American publications: *The China Press*, the *International Daily News* and the *Chinese Daily News*.

In response to the director's request for additional evidence, the petitioner submitted evidence of the circulation of the *Beijing Evening News* and the Chinese-American publications. The director concluded: "While the articles were minimal, the record contains abundant information on the newspapers widespread circulation." It is unclear from this statement whether the director found that the petitioner meets this criterion or not. We find that he does not.

The petitioner submitted evidence that the *Beijing Evening News* is distributed domestically and internationally, with a circulation of approximately 800,000. We do not find this circulation to be significant nationally, given China's overall population. We need not decide whether the Chinese-American newspapers, published in a language that the majority of the population in the United States cannot comprehend, are major media. The articles are about the filming of "Honor," and mention the petitioner only in passing, if at all. As such, the articles in the Chinese-American press cannot be said to be "about" the petitioner. The petitioner did not submit the circulation data for *Drama Movie and TV Journal*. Thus, the petitioner has not established that the publication constitutes major media.

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 petitioner has never claimed to meet this criterion, including on appeal, and the director did not address it. Nevertheless, we acknowledge that [REDACTED] Vice Director of the China TV Drama Production Center of CCTV, asserts that the petitioner was appointed a "member of the Judge Committee for the highest level of TV professionals in China." [REDACTED] Vice Dean of the Television College at Beijing Broadcast University, provides a similar statement. Neither [REDACTED] nor [REDACTED] however, explains exactly what the petitioner judged. Without additional information, we cannot conclude that the petitioner has 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.*

While the director did not include a heading relating to this criterion, the director appears to have discussed it under the leading or critical role criterion pursuant to 8 C.F.R. § 204.5(h)(3)(viii) discussed below. The director,

however, did not reach a conclusion. Rather, the director merely stated that the petitioner must establish that his contributions were of substantially greater significance than those of others in the field and that successful fulfillment of one's basic job duties are not contributions of major significance. While we agree with these premises, the director failed to apply them to the facts and reach a conclusion.

Guan Ling, Vice Dean of the Television College of Beijing Broadcast University, asserts that that the petitioner's 1990 television drama series, "Peking Man in New York" broke a viewership record, with over 300 million viewers. In 1994, the petitioner produced the first documentary TV drama in Chinese TV history. Mr. Ling lists other series produced by the petitioner that "broke the historical record of the Chinese drama production." The 2001 newspaper article in the *Beijing Evening News* asserts that the petitioner's series "Feeling Power in the World" was the most popular Chinese television drama at the time. While we cannot credit the petitioner with the awards received by his employer for the reasons discussed above, we acknowledge that he has produced several award-winning dramas. Considering the record as a whole, we find that the petitioner has demonstrated that he meets this criterion.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner initially submitted photographs of the petitioner at work. The petitioner did not submit any evidence that these photographs were part of an artistic exhibition or showcase of his work. While the petitioner's drama series have appeared on television, it is inherent for television shows to be broadcasted. There is no evidence in the record that the series were broadcast as part of an artistic exhibition or showcase. As such, the petitioner has not demonstrated 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.*

While the petitioner initially claimed to meet this criterion, the director's discussion under this heading relates to the contributions criterion pursuant to 8 C.F.R. § 204.5(h)(3)(v), discussed above. For the reasons discussed below, we find that the petitioner meets this criterion.

Counsel asserted initially that the petitioner was "the Director and General Producer of [the] China TV Drama Production Center at China Central TV." The petitioner submitted a certificate from the China TV Drama Production Center confirming that since 1997, the petitioner has been "a Vice Director of the Art and Literature Department, General Producer of our Center." The certificate does not further elaborate on the organization of the center. One of the petitioner's references, Mr. Wang also holds the title of Vice Director.

While the evidence regarding the petitioner's role for the center as a whole is not persuasive without additional evidence of the center's organization, we acknowledge that the petitioner has produced several award-winning dramatic series. As these series have enjoyed a distinguished reputation and we accept that the producer is a leading or critical role, we find that the petitioner has 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.*

The petitioner did not initially claim to meet this criterion. In response to the director's request for evidence regarding the petitioner's commercial success, the petitioner submitted evidence of his income and evidence of

the average income for Beijing. The director noted that the petitioner did not submit any evidence of the high-end compensation for television producers in China. On appeal, counsel asserts that no government or public information with this data is available for China. Assuming this fact to be true, counsel does not explain why secondary evidence or affidavits from Chinese experts in the field cannot be submitted. See 8 C.F.R. § 103.2(b)(2). Without any evidence that would allow us to compare the petitioner's remuneration with the top members of his field in China, we cannot conclude that the petitioner has 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.*

While the petitioner submitted evidence of his wages to meet this criterion, wages are more properly considered above and we have done so. On appeal, counsel references the ranking of the petitioner's recent television drama. This drama was in production at the time of filing. Its ranking on November 23, 2003, six months after the petition was filed, is not evidence of the petitioner's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, as viewers do not pay for television, counsel has not provided us with a means of comparing television rankings with the type of evidence specified by the regulation, such as box office receipts.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a television producer 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 indicates that the petitioner shows talent as a television producer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.