U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 10 2006

WAC 05 207 50759

IN RE: Petitioner:
Beneficiary: [redacted]

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, Chief
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. 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on July 11, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a dancer.

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 the following:

1. A fill-in-the-blank certificate stating that the petitioner "won the Silver Prize for the Fifth Traditional Folk Dance Competition of Korea in 1997"
2. Certificate stating that the petitioner "won the Gold Prize for Chinese Dance Art Festival in 2002"
3. Certificate stating that the petitioner's folk dance performing team "won the First Prize . . . of the National Dance Grand Contest" (1998)
4. Certificate stating that the petitioner "won the First Prize in the Tenth Folk Dance Grand Contest of China" (1999)
5. Certificate stating that the petitioner was named "Top Ten Outstanding Youth Artist of China" (August 20, 2003)
6. A fill-in-the-blank Certificate of Appreciation from the American Chinese Communications Association in recognition of the petitioner's "performance during the Asian Month in New York City" (August 5, 2005)

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (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 translations accompanying the petitioner's award certificates numbered 2, 3, 4, and 5 above were not certified as required by the regulation.

In regard to items 1 through 4, we note that large-scale dance competitions typically issue event programs listing the order of events and the names of the contestants. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the competitions for which she submitted award certificates.

In regard to item 5, we cannot ignore that the petitioner allegedly won this "youth" award on August 20, 2003 at the age of 30.[1] Aside from the name of this award and the petitioner's age at the time of its issuance being contradictory, we find that "youth" awards offer no meaningful comparison between the petitioner and experienced dance professionals. There is no evidence showing that the petitioner faced competition from throughout her entire field, rather than her approximate age group within that field. Such awards are not an indication that the petitioner has reached the "very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

We find that item 6 reflects local recognition rather than national or international recognition. Further, we note that this certificate was presented to the petitioner subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In regard to items 1 through 6, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. Further, the record includes no evidence that would demonstrate the number of awards given, the geographic area from which the

[1] The petitioner was born on April 2, 1973.

individuals eligible for consideration for these awards were drawn from, the criteria for granting these awards, the level of expertise of those considered, and the number of individuals eligible to compete. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence showing that the awards presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally or internationally recognized cannot suffice to satisfy this criterion. In this case, there is no supporting documentation from the awarding entities or the print media to establish that the petitioner's awards are nationally or internationally recognized awards.

> *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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, 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 initially submitted an Association of Chinese Artists membership card listing her age as "32" and an issuance date of "February 20, 2001." We note, however, that the petitioner was born on April 2, 1973. As of February 20, 2001, the issue date of this membership card, the petitioner would have been age 27 not age 32. The petitioner has not resolved this discrepancy. 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).

On appeal, the petitioner submits a duplicate copy of the initial version of her Association of Chinese Artists membership card; however, the more recent version now lists her age as "28" rather than "32." Aside from the alteration of the data related to her age, the two versions of the Association of Chinese Artists membership card submitted by the petitioner are identical. Astonishingly, even after the obvious alteration, an age discrepancy remains. As of the issue date of February 20, 2001, the petitioner would have been age 27 not age 28. The existence in the record of two conflicting versions of the same membership certificate (both containing errors related to the petitioner's age) raises serious doubts regarding the credibility of the petitioner's evidence. The method and means through which the petitioner obtained these membership certificates has not been adequately documented or explained. Without competent objective evidence in the record pointing to where the truth lies, we find that the petitioner has not resolved these inconsistencies. 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. *See Matter of Ho* at 582, 591-92.

The petitioner submitted an undergraduate diploma issued by the Beijing Dance Academy. In a June 29, 2005 letter accompanying the petition, the petitioner argues that her undergraduate diploma is adequate to satisfy this criterion. We do not find, however, that a diploma resulting from four years of undergraduate study is tantamount to "membership" in an association in the field requiring outstanding achievement.

The petitioner also submitted a "Letter of Appointment" allegedly issued by the Association of Chinese Dramatists stating that she was employed as an "Art Counselor of Chinese Folk Dance." This letter, however, includes no address, telephone number, or any other information through which this association may be contacted.

On appeal, the petitioner asserts that she served as a Director and Supervisor of Folk Dancing Art for the Association of Chinese Dancers, but the record includes no evidence to support her assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner's appellate submission includes a certificate indicating that she is a member of the World Association of Beauty Culture of Flushing, New York and an award certificate from the American Chinese Communications Association.

In this case, the petitioner has not submitted evidence of the membership bylaws or the official admission requirements for the Association of Chinese Artists, Association of Chinese Dramatists, Association of Chinese Dancers, World Association of Beauty Culture, or American Chinese Communications Association. There is no evidence showing that admission to membership in these associations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership.

> *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 order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the 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.[2]

[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, cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted an article that was allegedly published in the March 1997 issue of *Dance* magazine. The author of this material was not provided as required by this criterion. Further, the translation accompanying the article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Finally, there is no evidence showing that this publication had substantial national readership.

In this case, we find no evidence to demonstrate that the petitioner has earned sustained national or international acclaim in major media.

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

The petitioner submitted various photographs of what are alleged to be her stage performances. This particular criterion, however, is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. Virtually every dancer "displays" her work in the sense of performing in front of an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's stage performances are far more relevant to the "commercial successes in the performing arts" criterion.

Even if we were to address the petitioner's performances under this criterion, she has not demonstrated that her performances have consistently been the centerpiece of major productions at prestigious venues. Such a standard must be set for the petitioner to establish that she enjoys sustained acclaim near the top of her field.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion calls for commercial success in the form of "sales" or "receipts"; simply submitting what are alleged to be photographs of one's performances cannot meet the plain wording of the regulation. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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 petitioner's appellate submission includes a letter dated August 27, 2005 in which she vaguely addresses her intent to continue her work in the area of Chinese folk dancing. The five sentences addressing this issue do not reflect a detailed plan, nor do they constitute "clear evidence" of the petitioner's work intentions in the United States.

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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.