

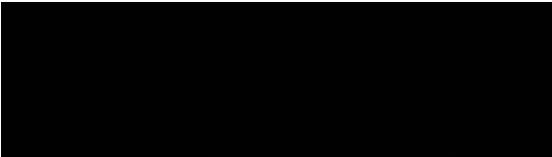


U.S. Citizenship
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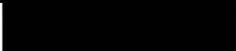
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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JUN 11 2009

LIN 07 112 51704

IN RE:

Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences, arts or business or as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a graduate assistant studying for a master's degree in Arts Management at Western Michigan University (WMU), Kalamazoo. On the Form I-140 petition, the petitioner indicated that he seeks temporary, part-time employment as an "Agent[] and Business Manager of Artists, Performers and Athletes" at WMU. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a personal statement and two new witness letters.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director found that the petitioner qualifies as a member of the professions holding an advanced degree. We will revisit this finding later in this decision. The director's only stated ground for denial concerned the issue of whether the petitioner has established that a waiver of the job offer requirement, *and thus a labor certification, is in the national interest.*

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied

for the national interest waiver. The director, however, did not raise this issue. We will, therefore, review the matter on the merits rather than leave it at a finding that the petitioner did not properly apply for the waiver. In a personal statement accompanying the initial filing of the petition, the petitioner described his work:

[I]n 1995, I became a teacher at Hunan Provincial Art College. . . . Four years later, I was assigned by the college president to be the arts manager of Hunan Stars River Performing Art Company. . . . In 2001, I was assigned . . . to be the director of [the] Institute of Overseas Arts and Cultural Exchange. From 2001 to 2004, I led three Chinese artists groups to give 22 performances in four international arts festivals and a nine-city tour in Europe, Asia and the United States, and made one academic cooperation come to an agreement between Hunan Arts College, HN, China and Western Michigan University in the United States. . . .

I have already contributed immensely to the arts field worldwide, practicing what I learned in arts management by participating in several arts and cultural exchange events and international arts festivals in three European and two Asian countries. . . .

Through these programs, I also get to know how important my work is to improve the international culture understanding between countries. When I worked as the arts manager in Hunan Stars River Performing Art Company, I received a Jazz music band from Michigan, U.S. in June, 2002. Before I received the group, Jazz music had been listed as the not welcome music and prohibited to the public in China by the Chinese government. When I brought the American Jazz music band to give 6 concerts in two big cities: Changsha and Xi'an, people were shocked and crazy about this typical American style music. Then, the people began to listen and play the Jazz music and wanted to know more other American music. Now, millions of Chinese people have accepted the American Jazz music as their favorite, even there are many local Jazz music bands in the two cities in China.

The wording of the above paragraph implies that the petitioner single-handedly overturned a national ban on jazz music in 2002. The petitioner submits no evidence that “the Chinese government” prohibited jazz music up until 2002. That government’s general reputation for censorship is not sufficient to support the petitioner’s specific claims. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The petitioner continued:

In February, 2004, with the joint invitation of Western Michigan University and Mayor of Kalamazoo, [REDACTED], I led a fifteen-person Chinese arts group to Michigan for a series of arts events. . . . [T]he group gave a concert . . . at the John David Mooney Foundation in Chicago. The audience for this performance included the ambassadors from Canada, Australia, Ireland, and Greece, as well as dignitaries

from Korea and China. The group presented traditional Chinese arts to more than 5,000 American people and were greatly welcomed. . . . As evidence of its significance, this cultural exchange resulted in two publications.

The USCIS regulation at 8 C.F.R. § 103.2(b)(3) requires the petitioner to submit complete, certified translations of foreign-language documents. The petitioner, however, submitted only “abstracts” that offered only summaries rather than complete translations. The two articles appeared respectively in the February 28 and 29, 2004, issues of *China Culture Daily*. The two articles reported that “a fourteen-person Chinese professional art group” toured the Midwestern United States, and that the artists were the guests of honor at a government-sponsored reception in Kalamazoo. Overall, the abstracts are similar to the petitioner’s own description of the events. The petitioner’s name does not appear in the abstracts.

The petitioner continued:

I have led many Chinese arts groups to several countries in Europe, Asia and the United States, and I served as the arts manager and interpreter for each group. With my language advantage, I understand very well about the arts environment and markets in different countries. . . . Because of my international arts management experience in promoting arts and cultural exchange in many countries, I have gained an international reputation as an outstanding arts professional in my field. . . .

My original and important contributions to international arts and cultural exchange . . . prove my ability to vitally contribute to the national interest. I have quite [a] lot [of] records of success in arts and cultural exchange on a worldwide basis and I have served the United States with yielding significant benefits. In addition, I hope to remedy the critical situation of the current market of arts and culture in the United States, and enlarge the developing market in Asia to present American artists’ talents and their performing arts to Asian audiences. . . .

All of my special qualities, skills, abilities, and knowledge, combined with my prior successes, make me ideally suited to the field of international arts and cultural exchange.

. . .

The Asian art professionals lack education and training of arts management and practical work experience in the United States; the American art professionals don’t have any Asian arts and culture background and deep understanding of the Asian arts market and business operation. Meanwhile, I possess these unique skills, knowledge and background because of my education and practical work experience in Asia, Europe and the United States. My consistent accomplishments of high creativity and productivity on the international arts and cultural exchange identify that I am destined to continue making substantial contributions in the field.

The petitioner indicated that he managed a group that won a medal at a festival in Greece in 2001, and another group that won a prize at a festival in Germany in 2003. The petitioner did not document these awards, nor did he claim that he personally won either of the awards.

Several witness letters accompanied the petitioner's initial submission. Many of the witnesses are professors or instructors at WMU. [REDACTED], Dean of the College of Fine Arts, stated:

[The petitioner] has proved himself to be an accomplished leader in promoting the arts and cultural exchange between the United States and Asian Countries, and he has exceptional ability [in] arts management in [the] global performing arts market. . . .

We offered him a major fellowship because we believe that he is outstanding in the field of arts management with his unique skills, knowledge, and background. Since 2005, he has worked in my office. . . .

I am struck with [the petitioner's] keen focus on bringing communities together for cultural understanding through artistic exchanges. He has many contacts in Asia and is now in the position to be able to facilitate the exchange of American Artists with Asian Artists, and international cultural understanding, which would enrich and educate our society to a high degree.

Director of WMU's School of Music, credited the petitioner with "many contributions in the field" but did not elaborate. [REDACTED] stated that the petitioner's "work has the potential for continued exchanges and growth of understanding between cultures and countries."

[REDACTED] stated:

The university and Kalamazoo community have benefited greatly from [the petitioner's] expertise and organizational skills in the arts as he has completed graduate degree work and enhanced the cultural richness in Southwest Michigan. . . .

[The petitioner] brings to this country a knowledge of arts activities in various parts of the world with a world vision for arts development that is important to us if we are to prevent further decline of our own artistic achievement. He has actively coordinated successful international tours with Chinese arts groups and has the contacts in China to facilitate interchanges with American arts groups.

[REDACTED] Director of the Miller Auditorium at WMU, stated:

[The petitioner] is a dedicated student in the performing Arts Administration program at Western Michigan University. He is very interested in cross-cultural exchanges with

China. This summer he was involved in bringing a Chinese silk embroidery exhibit and gala with the Mooney Foundation in Chicago, Illinois.

For the past two years [the petitioner] has been an arts administration intern at Miller Auditorium. Miller Auditorium is a 3500 seat performing arts center on the campus of Western Michigan University. During this time [the petitioner] worked on [several] performances . . . [and] in several other departments including the Ticket Office, Administration and Marketing, gaining valuable experience.

In January 2007, [the petitioner] attended the Association of Performing Arts Presenters Conference in New York City. . . . During the conference [the petitioner] was able to make contact with artist representatives and arts agents from all over the United States to build his network with the goal of promoting performing arts between Asia and the United States.

Executive Director of the Arts Council of Greater Kalamazoo, stated:

In the spring of 2006, I team-taught the Introduction to Performing Arts Administration course for the MFA program in Performing Arts Administration for Western Michigan University – where [the petitioner] was one of my students. . . .

As the P.R.C. [People's Republic of China] has moved to a market economy, the performing arts facilities have also been making the difficult transition from a state-supported to a market driven funding base. Also, as government restrictions on Western art forms has [*sic*] begun to relax, the potential market for American performance groups has grown. But, as with all areas of commerce, negotiating the complex financial, cultural and political waters of China requires a sophistication and knowledge base that is difficult to achieve without being native born. This is particularly true in the performing arts world, where arts organizations rarely have access to staff members with this specialized knowledge and connections.

. . . [The petitioner] has demonstrated his ability to plan and conduct successful arts exchanges between the U.S. and China in all genres of the arts. . . . He has the skill and aptitude to be of great value to American artistic institutions in expanding the potentially lucrative markets of Asia.

[REDACTED] stated:

WMU is located in the 60th House District which I have represented for the past six years in the Michigan Legislature. I have found [the petitioner] to be a highly energetic and enthusiastic young man with impressive experience in and knowledge of the arts and cultural exchanges. At his young age, he has already compiled an extensive background in the arts. . . . This talented and versatile individual has facilitated

numerous cultural exchanges and fostered goodwill and understanding between the United States and China on several occasions. . . .

[The petitioner's] outstanding resume speaks for itself – his vast experiences, activities and exhibits, presentations and publications, and achievements are too numerous to mention. His unique set of skills can only benefit this country as worldwide interdependence becomes increasingly important as we move through the 21st century.

The petitioner submitted another group of letters, described not as letters of recommendation but as evidence of his “Creative Activities and Achievements.” Some of these letters were courtesy letters acknowledging the petitioner's participation in various cultural exchange activities, while others discussed plans for then-future events. [REDACTED] Artistic Director of the John David Mooney Foundation, Chicago, Illinois, stated that the petitioner “worked 144 hours putting together” [an] exhibit at the Foundation in 2006.

The petitioner submitted copies of Chinese-language articles that he had written in various Chinese publications, along with capsule translations rather than the required complete translations. According to the petitioner, these articles were about such subjects as government support for the arts and a comparison of the music of Bach and Beethoven.

On June 25, 2008, the director issued a request for evidence (RFE), instructing the petitioner to submit further evidence of the impact that the petitioner has had on his field. In response, the petitioner submitted three further witness letters. [REDACTED] former Mayor of Kalamazoo and [REDACTED] successor as the 60th District's State Representative, stated:

During my tenure as Mayor, I invited [the petitioner] to bring a group of Chinese folk musicians to perform in the state of Michigan. . . . Since this cultural exchange, [the petitioner] and I have remained in contact. . . .

A remarkable cultural exchange to the United States began when [the petitioner] made it possible for an American Jazz group to visit China for the first time in China's history in 2002, which received huge acclaim, especially from the youth. In 2004, [the petitioner] led a group of artists to the United States and his endeavors led to formal academic agreements between Western Michigan University and The Art School of Hunan Province in China. . . .

[The petitioner's] intent . . . is to facilitate, develop, and expand exchange programs for Americans to perform in Asian cities. . . . With his contact[s] on several continents, [the petitioner] is able to help organize concerts and cultural exchanges, which will provide employment for American musicians in other countries.

repeated the claim that the petitioner arranged the first visit to China by an American jazz group in 2002. The record contains no reliable documentation to corroborate this claim. Even if the

petitioner did arrange the first such visit, this would not show that the petitioner was responsible for changing Chinese government policy relating to American jazz music; it could be that the policy changed without the petitioner's involvement, and the petitioner happened to be the first to take advantage of the change. The record contains no statement from any Chinese government official to confirm the policy change, and no media articles to report the policy change. The only references to the petitioner's claimed achievement are letters written years after the fact for the purpose of supporting the petition.

Acting Dean of WMU's College of Fine Arts, stated that the petitioner's background has given him "a unique familiarity with both Asian and American markets" and that he "holds the potential to serve our national interest through his work in cultural exchanges."

, Executive Director of the Litchfield (Connecticut) Jazz Festival, stated:

[The petitioner] is currently serving as a summer employee for The Litchfield Jazz Festival under my direction. With ten years experience in the field of cross-cultural arts management, [the petitioner] has some advantages; he is bilingual, and he is experienced in public relations and the development of international arts programs.

. . . He possesses extraordinary energy and vision for developing international performing arts appreciation and programs. [The petitioner] is uniquely qualified to bring Asian performing artists and groups to the United States for the edification and enjoyment of Americans, to whom we may not otherwise have exposure.

. . . [The petitioner] is uniquely qualified through his contacts, his education and his experience to nurture and develop more connections in the Asian market for American artists and vice versa.

The RFE witnesses, like the initial witnesses, have worked closely with the petitioner, usually either as his teachers or as his employers. The letters often repeat the general assertion that the petitioner is in an excellent position to influence cultural exchange between Asia and the United States, but the letters do not show what impact the petitioner has had in this area since he entered the United States to earn his master's degree.

The director denied the petition on September 29, 2008, stating that the witness letters in the record "fall short of demonstrating the petitioner's influence in the field of endeavor beyond his past or present academic institutions and circle of colleagues or work acquaintances." The director added "there is no evidence that independent Artists or Musicians view the petitioner's individual work as particularly significant or influential."

On appeal, the petitioner cites USCIS regulations at 8 C.F.R. § 204.5(h)(3)(v) and (vii). Those regulations relate to a separate immigrant classification (alien of extraordinary ability), established

under a different section of law (section 203(b)(1)(A) of the Act). Because the petitioner filed a petition seeking a different classification, the cited regulations are irrelevant to the present appeal.

The petitioner repeats the claim that he managed a group that “received a Silver Medal in the International Folk Arts Festival in Greece, [and] another group [that] won the Silver Prize in the 17th International Folklore Festival, Damgarten, Germany.” He asserts that these “awards from several countries can sufficiently demonstrate my influence and impact in the field of arts administration.” The petitioner does not explain this conclusion. The record does not show that the groups received their awards as a result of their management or administration, rather than on the merits of their own artistic performances.

The petitioner asserts that he had previously “listed all the exhibitions and showcases under my leading role in seven countries. . . . More than 600,000 people in those audiences witnessed my impact and influence in the field.” The argument appears to be that the petitioner has earned a waiver by arranging for international tours and exhibitions by various artists. Orchestrating such appearances, however, appears to be a basic job duty of his desired occupation. The petitioner does not explain why it is a mark of special distinction that, as an artist manager, he has successfully managed artists.

The petitioner states: “Regarding the letters of recommendation, please note that they are not all from my academic institutions, colleagues, or friends at work. The Arts Council of Greater Kalamazoo, the Litchfield Performing Arts Inc. in Connecticut, and the John David Mooney Foundation in Chicago are independent arts organizations.” The record contradicts the petitioner on this point. The record shows that Litchfield Performing Arts, Inc., produces the Litchfield Jazz Festival, where the petitioner was “a summer employee.” [REDACTED], director of the Arts Council of Greater Kalamazoo, described the petitioner as “one of my students” at WMU. In one of his letters, [REDACTED] stated “I was [the petitioner’s] supervisor” during his “work in art administration at John David Mooney Foundation in Chicago in July, 2006.”

The petitioner’s assertion that his former teachers and supervisors are independent witnesses diminishes the credibility of his unsupported claims. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). This further reduces the credibility of the petitioner’s undocumented claims to have received “awards from several countries” and to have introduced jazz music to China.

The petitioner submits two further letters, both from artist managers in New York, New York. The petitioner states that he had intended to submit these letters with the RFE response, but a house fire limited his ability to submit them at that time. The first letter is from [REDACTED] Executive Producer of AIM Entertainment, Inc., who states:

I got to know [the petitioner] by his reputation in his fabulous arts administrative work in presenting American Jazz group and Broadway shows in China and other Asian cities [*sic*]. . . . Since then he has worked with us on numerous joint projects in

several cities in Asia, and his unique edge of being familiar with artists, venues from both the United States and China adds tremendous value. . . . As a result of his effort, in 2003 [the] Chinese government changed its mind to issue a license to an American Jazz band.

We note that the petitioner and others claimed that the American Jazz band visited China in 2002, not 2003. [REDACTED] then described some of the petitioner's activities in 2008 and 2009, which occurred well after the petition's March 2007 filing date. The beneficiary of an immigrant visa petition must be eligible at the time of filing. 8 C.F.R. §§ 103.2(b)(1) and (12). Subsequent developments cannot establish eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

of Stanton Management states: “[T]ouring in China offers many unique challenges for Americans. Cultural and language differences can be stark. [The petitioner], I believe, offers companies such as ours a unique opportunity to work more confidently in these markets.” Mr. [REDACTED] indicates that the petitioner's value lies in his familiarity with the culture, language, and artistic management practices in both the United States and China. The petitioner has not shown that these are special traits that he possesses, rather than the expected results of his being an artist manager in China who then studied arts management in the United States.

The record establishes that the petitioner has successfully worked with traveling artists, whether Chinese artists outside of China or non-Chinese artists within China. The available evidence, however, does not show that the petitioner's impact and influence have been so significant as to warrant the special benefit of a national interest waiver. The AAO is not of the opinion that the petitioner's national origin is, itself, a strong factor that inherently establishes his eligibility for the benefit he seeks.

For the reasons explained above, we agree with the director's finding that the petitioner has not shown that he qualifies for the waiver.

Review of the record leads us to revisit the director's finding that the petitioner qualifies for the underlying immigrant classification. 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).

In filing the petition, the petitioner did not initially specify whether he sought classification as a member of the professions holding an advanced degree, or as an alien of exceptional ability. In the notice of decision, the director stated “the petitioner holds the requisite advanced degree.”

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) defines “profession” as “one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.” On Form

I-140, the petitioner listed his job title as “Agents and Business Manager of Artists, Performers and Athletes,” with a SOC (Standard Occupational Code) of 13-1011. The petitioner’s occupation is not listed in the cited section of the Act, but according to the listing for SOC 13-1011 on the Bureau of Labor Statistics’ O*NET database, “[m]ost of these occupations require a four-year bachelor’s degree.”¹ It appears, therefore, that the petitioner’s intended occupation qualifies as a profession because it requires a bachelor’s degree. (This finding concerns the occupation itself, rather than the petitioner’s qualifications for that occupation.)

The USCIS regulation at 8 C.F.R. § 204.5(m)(3)(i) requires that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

At the time of filing, the petitioner did not claim to hold an actual advanced degree that would satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). He was still studying for his master’s degree when he filed the petition in March 2007. Therefore, he could qualify for classification as a member of the professions holding an advanced degree only if he provided employer letters showing that he has at least five years of progressive post-baccalaureate experience in the specialty.

A translated certificate from Hunan Normal University indicates that the petitioner “studied in Music Education . . . from 1999 to 2002 and has completed the requirements as stipulated in a three-year undergraduate program with satisfactory results and is hereby granted graduation.” The certificate, dated June 30, 2002, does not mention any degree. A later “Certificate of the Bachelor’s Degree,” dated December 31, 2002, indicates that the petitioner “has studied for three years (from Sept. 1999 to June 2002)” and “is awarded the degree of Bachelor of Arts.”

A translated “Certificate of Employment” indicates that the petitioner “worked as a Western Arts Teacher at Hunan Arts School from December 1995 up to now, and he has also worked as Arts Manager in Hunan Star River Performing Arts Company from May 2001 up to now.”

A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). The petitioner has submitted no evaluation report to show that his three-year degree from Hunan Normal University is equivalent to a four-year bachelor’s degree from an accredited United States college or university.

¹ Source: <http://online.onetcenter.org/link/details/13-1011.00> (visited June 9, 2009; printout added to the record).

More significantly, the petitioner received the above degree less than five years before he filed the petition on March 5, 2007. Therefore, even if his degree from Hunan Normal University were shown to be equivalent to a United States bachelor's degree, it is mathematically impossible for the petitioner to have accumulated five years of progressive post-baccalaureate experience prior to the filing date.

In response to the RFE, the petitioner asserted "a letter from my former employer demonstrates six years of progressive post-baccalaureate experience in the specialty." The letter, attributed to Jienan Yi of Hunan Art School, indicated that the petitioner "had worked as Artistic Director at Star River Performing Arts, Inc., which is affiliated [with] Hunan Art School, from April 1999 to June 2005, adding up to six years." This new letter appears to contradict the previously submitted "Certificate of Employment" that indicated that the petitioner "worked as a Western Arts Teacher at Hunan Arts School from December 1995 up to now, and he has also worked as Arts Manager in Hunan Star River Performing Arts Company from May 2001 up to now." Furthermore, the regulation clearly indicates that only post-baccalaureate experience counts toward the five-year experience requirement. Even if the petitioner had shown that his Chinese degree is equivalent to a United States baccalaureate (which he has not done), he did not receive that degree until 2002. By definition, any experience that he earned before he had a bachelor's degree is not, and cannot be, post-baccalaureate experience.

For the above reasons, we must withdraw the director's finding that the petitioner, at the time of filing, qualified as a member of the professions with post-baccalaureate experience equivalent to an advanced degree. The information provided by the petitioner indicates, on its face, that the petitioner was not yet eligible for that classification as of the filing date because, at that time, he had neither an advanced degree nor five years of progressive post-baccalaureate experience in the specialty.

In the interest of thorough consideration of the petition, we will briefly consider whether the petitioner qualifies for classification as an alien of exceptional ability in the sciences, arts or business. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

As noted above, the petitioner was still studying for his master's degree when he filed the petition. The petitioner's only degree at the time of filing was a three-year degree in music education. The petitioner does not satisfy this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

We have already observed that the petitioner had less than five years of experience in arts management at the time of filing. Furthermore, all of the petitioner's experience in arts management appears to have been part-time, as he was employed as an art teacher in China, and later he was a full-time graduate student in the United States. Therefore, there is no evidence that the petitioner has any full-time experience in the occupation he now seeks.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

In 2003, China's State Administration for Industry and Commerce granted the petitioner a "General Business Broker" license as an "Arts and Cultural Broker." The record contains no further documentation or information about this license to show that it relates to his abilities, rather than serving as a basic permit to engage in the occupation.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

The record contains no evidence relating to this criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The petitioner was a Council Member of the Performing Arts Institute of Henan Province prior to his arrival in the United States, and he joined the Association of Performing Arts Presenters in 2006. The record contains no further evidence about these associations, to show that membership entails exceptional ability. If an organization requires only that one pay dues and work in a particular field, then membership in such an organization does not establish a degree of expertise significantly above that ordinarily encountered in the field.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F)

The petitioner submits a "Special Tribute from [the] State of Michigan" and a "Proclamation from the city of Kalamazoo." The "Special Tribute," dated February 6, 2004, indicates that a "delegation from the Art School of Hunan Province" seeks "to begin a dialogue with Western Michigan

University” and other institutions “for the purpose of establishing a student exchange program.” The Mayor of Kalamazoo issued his undated “Proclamation” to “welcome the representatives of The Art Vocational School and The Hunan Provincial Cultural Department . . . and express our deepest appreciation for their talents and wish them a successful visit.” The petitioner’s name does not appear on either of these documents, although the names of other visitors from China do appear. The petitioner has not explained how these documents amount to recognition for achievements or contributions.

While the petitioner’s initial submission included apparent attempts to establish eligibility as an alien of exceptional ability, the petitioner’s RFE response does not show any effort to pursue this claim. Instead, the petitioner focused his RFE response on the claim that he qualifies as a member of the professions with the defined equivalent of an advanced degree.

At the time of filing, the petitioner was not eligible for classification as a member of the professions holding an advanced degree or its defined equivalent. The evidence submitted is not sufficient to establish that the petitioner qualifies as an alien of exceptional ability in the sciences, arts or business. Also, on the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification would be in the national interest of the United States even if the petitioner did qualify for the underlying immigrant classification.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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.