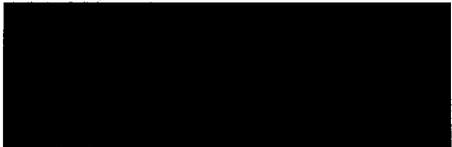




U.S. Citizenship
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FILE: [REDACTED]
EAC 03 222 51486

Office: VERMONT SERVICE CENTER

Date: DEC 16 2005

IN RE: Petitioner: [REDACTED]
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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on July 28, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese Peking Opera Actor." The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1995. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than seven years), it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a performer in this country.

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. "Certificate of Honor" stating that the petitioner "won the third place prize in the First Professional Competition of Middle-aged and Young Performers . . . of Wuhan City" (1982)
2. "Certificate of Honor" stating that the petitioner "won the Excellent Performance Award in the 1987 National Television Grand Selection Contest of Young Peking Opera Performers."
3. "Certificate of Performance" stating that the petitioner "participated in the Show of '91 Chinese Tourist Art Festival and Guangdong Carnival"
4. Certificate stating that the petitioner won the "Plum Blossom Prize of Chinese Traditional Opera" (1991)
5. "Certificate of Award" stating that the petitioner won the "First Place Bud Award in the Second Joint Show of Secondary Art Schools of Shandong Province" (1992)
6. Certificate stating: "This is to certify that Mr. [REDACTED] was awarded for his contribution in the Third National Competition of Peking Opera." (1995) [emphasis added]

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 were not certified as required by the regulation.

In regard to items 1, 2, and 5, there is no indication that the petitioner faced competition from throughout his field, rather than his approximate age group within the field. A youth award offers no meaningful comparison between the petitioner and established performing arts professionals. We further note that item 2 reflects provincial recognition rather than national or international recognition. In regard to item 3, there is no evidence showing that this certificate is a nationally recognized award for excellence in the performing arts, rather than simply an acknowledgement of the petitioner's participation in the event. In regard to item 6, the award recipient named in the non-certified English language translation of the certificate is not the petitioner.

In this case, there is no evidence of publicity surrounding the petitioner's awards or evidence showing that they enjoy a significant level of recognition. Because the statute requires "extensive documentation" of sustained national or international acclaim, the petitioner must submit contemporaneous evidence showing that his awards enjoy significant national or international stature.¹ The record includes no documentation

¹ For example, large-scale competitions typically issue event programs listing the order of events and the names of the participating 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 in which he received awards.

from the awarding entities or print media to establish that the petitioner's awards are nationally recognized performing arts 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 submitted evidence of his membership in the "World Association of Beauty Culture" and the Association of Chinese Artists. The record, however, includes no evidence of the bylaws or the official admission requirements for these associations showing that they require outstanding achievement in the performing arts. According to the translation accompanying the petitioner's membership card from the Association of Chinese Artists, his membership grade is listed as "Second-Class Performer of State." The petitioner does not explain how being a "Second-Class Performer" indicates that he is one of that small percentage who have risen to the very top of the performing arts field. See 8 C.F.R. § 204.5(h)(2). We further note that the petitioner's "Working Unit," the Henan Provincial Peking Opera Troupe, is a provincial organization rather than a national or international organization. In this case, there is no evidence demonstrating that admission to membership in the preceding associations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a one-sentence "Notarial [sic] Certificate" stating that he "worked as a professional Peking Opera actor in Henan Provincial Peking Opera Troupe from September 1988 to November 1995." This certificate was issued by [REDACTED] a Notary in the Henan Province Notary Public Office, rather than by an official of the Henan Provincial Peking Opera Troupe. The record includes no evidence showing that this opera troupe has earned a distinguished reputation when compared to other Peking Opera troupes throughout China. Nor is there evidence of the petitioner's individual importance to the troupe's overall

success. In this case, the petitioner has not established that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). As noted previously, this regulation and section 203(b)(1)(A) of the Act require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been present in the United States since December 19, 1995, but there is no evidence showing that he has been involved in any work related to Peking Opera performances during the last ten years. Specifically, the petitioner has been the beneficiary of an approved P-3 nonimmigrant petition that authorized him to work in the United States as an artist/entertainer from April 7, 2003 to May 1, 2004 (SRC 03 083 51453), filed by the Taishan International Culture Exchange Center). Astonishingly, the petitioner has submitted no evidence of his work as a performer even during that authorized period. Based on the lack of evidence that the petitioner has been working in his area of expertise, he has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a performer 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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 record contains no such evidence.

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.