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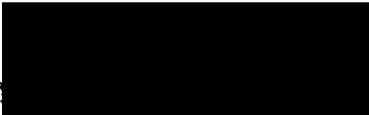
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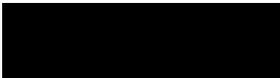
Office: VERMONT SERVICE CENTER

Date: JUN 03 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.

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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a singer, actor, performer, host and photographer. The petitioner, unrepresented below, submitted numerous supporting documents with his petition including: six compact discs recorded by his former Taiwanese pop band "Red Hot Boys;" videotapes of some of the band's performances; videotapes of Taiwanese television programs featuring the beneficiary; a videotape of a short film featuring the beneficiary; the script of a Taiwanese television program starring the beneficiary; six recommendation letters; samples of media coverage; copies of his photographs published on magazine covers in the United States; and documentation of two exhibitions of his photography. The director determined that the petitioner had not sustained his former acclaim as a Taiwanese pop singer through his subsequent work in other areas and was consequently ineligible for classification as an alien with extraordinary ability in the arts.

On appeal, counsel submits a three-page unsigned brief and no new evidence. Counsel claims the director “fail[ed] to consider the reason why the nature of [REDACTED] achievements changed” and explains that “[o]ne does not remain prominent as a member of a boy band. One must, almost by definition, move on. . . . [I]t is difficult to name any such individuals who have sustained their prominence. [REDACTED] has attempted to do so.” Counsel presents no substantive reasons and cites no specific evidence to support a finding that the petitioner has sustained his past acclaim as a singer through his subsequent work in other areas. Rather, counsel simply concludes that “[g]iven [REDACTED] early prominence and his successful, albeit nascent, attempts to sustain prominence, it is in his interest and the interest of the U.S. to have such an individual.” While we recognize the often transient nature of fame earned as a young performer, that phenomenon does not change the statutory and regulatory requirement of sustained national or international acclaim inherent to classification as an alien with extraordinary ability.

The evidence previously submitted and the director’s decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner’s case.

(i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner claims to meet this criterion through his “international fame” as a member of the Taiwanese band, the Red Hot Boys. The petitioner states that the band was famous throughout Taiwan, Mainland China, Hong Kong and Thailand and that their compact discs were “best sellers for years in the region.” He also cites the band’s special concert videotapes and special television programs featuring the band’s performances. However, fame is not equivalent to prizes or awards. The record contains no evidence that the “Red Hot Boys” or the petitioner himself received any nationally or internationally recognized prizes or awards for their performances or recordings.

The only evidence of an award granted to the petitioner is a photograph of him in military uniform wearing a red banner with white Chinese characters. A cover page to the photograph reads: “Spokeman [sic] of the 2th [sic] Ministry of National Defense R.O.C. [Republic of China] Golden Red Pipe Award” and a handwritten caption to the photograph states, “1995. [REDACTED] won the Golden Voice Award by Taiwan Military.” The record indicates that the petitioner performed his mandatory military service in Taiwan after graduation from high school. His resume states that from 1993 to 1995 he served in the “Lugang Art Team” of “The Army General Headquarters.” According to his resume, in 1994 he was the “Spokesman of the 1st Ministry of National Defense R.O.C. ‘Golden Red Pipe Award’” and in 1995 he was the “Spokesman of the 2nd Ministry of National Defense R.O.C. ‘Golden Red Pipe Award.’” The petitioner does not explain why he was granted this award and the record is devoid of any evidence of the award’s significance that would indicate that the honor is a nationally recognized prize or award in the arts. Accordingly, the petitioner does not meet this criterion.

(iii) Published material 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 record contains a videotape of interviews of the petitioner’s former band, the Red Hot Boys, that were broadcast on Taiwanese television programs. Although these interviews demonstrate the petitioner’s past acclaim as a pop singer, they do not reflect the requisite sustained acclaim. The record also includes numerous newspaper articles mentioning the petitioner and many of the articles feature his photograph. The director noted

that the petitioner “continued to appear in Taiwanese newspapers from 1989 until the present.” However, the record contains no documentation that the newspapers and magazines in which the articles appear constitute professional, major trade publications or other major media. Most importantly, all of the articles in Chinese are accompanied by incomplete and uncertified translations. Because the petitioner failed to submit certified translations of these articles, we cannot determine whether the evidence meets this criterion. *See* 8 C.F.R. § 103.2(b)(3).

We consider the one article in the record that was printed in English.¹ An article entitled “Gone and back again – Han Chi-chieh” was published in the “Arts & Books” section of the *Taipei Times* on July 1, 2001. The article reviews the petitioner’s first photography exhibition in Taiwan and explains that he “called it quits with the Red Hot Boys when he was 20, went on to complete his military service and then packed up for art school in New York. In this show, his first solo exhibition, [redacted] proves to be a skilled photographer with a great instinct for capturing abstract poetic photos.” The article quotes the petitioner extensively and features one of his photographs. Although this article is about the petitioner’s photography, the record contains no circulation information or other evidence that the *Taipei Times* is a major, national newspaper in Taiwan and not a regional newspaper of the Taipei metropolitan area. Accordingly, the petitioner does not meet this criterion.

(v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner claims to meet this criterion through his work as a singer with the Red Hot Boys, his performances in Taiwanese television and movies and his photography. The petitioner submitted copies of five compact discs recorded by the Red Hot Boys and one compilation disc featuring one song performed by the band. The discs were issued between 1989 and 1992. The record also contains videotapes of two live performances, shows and interviews of the “Red Hot Boys.” As discussed above under the third criterion, we cannot consider the numerous newspaper articles about the petitioner and his band because they were not properly translated. *See* 8 C.F.R. § 103.2(b)(3). However, other documents indicate that the petitioner became famous as a member of the Red Hot Boys. The recommendation letters describe the petitioner as a well-known singer and member of the Red Hot Boys. In addition, the aforementioned article from the *Taipei Times* refers to the petitioner as a “former popstar” and describes him as “a former member of the Red Hot Boys, Taiwan’s version of the New Kids on the Block.” Although the record establishes that the petitioner was a famous Taiwanese popstar, the evidence does not indicate that his work as a singer resulted in any original contributions of major significance to Taiwanese pop music. The petitioner’s resume states that each of the band’s five recordings obtained between three and five platinum albums, but the record contains no documentation to support that claim. Statements made without accompanying documentary evidence cannot meet the petitioner’s burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record indicates that the petitioner has also acted in Taiwanese television shows and one short film and has been a host and reporter for two other Taiwanese television programs. The petitioner submitted videotapes of his performances in the Taiwanese television series “Chicken Mum and Her Children” (also translated as “The Hen Leading the Duck”) in 1992 and “Rock Shakespeare” in 2001. Another videotape documents the petitioner’s work as a host and reporter for two Taiwanese television programs in 1996 and 1998. The

¹ The petitioner submitted two copies of this article, one published in the newspaper and one printed from the online version of the newspaper. The text of the articles is identical.

petitioner also submitted photographs of himself with famous actors appearing in the films "Patch Adams," "Shakespeare in Love," and "The Prince of Egypt" who the petitioner interviewed in 1998 for the Taiwanese television program "Show Biz." Finally, the petitioner submitted a videotape of a 15-minute film entitled "Into Dust" in which he starred. The film was made in 1998 in Taiwan and the United States, but the record contains no evidence that it was ever shown publicly or widely distributed. The record is devoid of any evidence that the petitioner received critical acclaim or awards for these performances or influenced Taiwanese television and film in any other substantive manner. The record thus demonstrates that the petitioner has intermittently appeared on Taiwanese television (and in one film), but does not establish that his acting, hosting or reporting made original contributions of major significance to Taiwanese television or film.

The record also contains insufficient evidence that the petitioner's photography satisfies this criterion. The petitioner has exhibited his photographs only twice, the first exhibition being a group graduation show for Bachelor of Fine Arts (B.F.A.) students at the School of Visual Arts in New York where the petitioner received his B.F.A. degree in 2001. The petitioner's second exhibition was a solo show entitled "Blurry" that was held at the Taiwan International Visual Arts Center in 2001. This exhibition was favorably reviewed in the *Taipei Times* article previously discussed under the third criterion. Again, we are unable to consider the other newspaper articles submitted about this exhibition because they are accompanied by incomplete and uncertified translations. See 8 C.F.R. § 103.2(b)(3). The record also contains copies of five covers of the trade journal *Tea & Coffee* published between October, 2001 and May, 2002 and four covers of the trade journal *Tobacco International* published between September, 2001 and April, 2002 that feature photographs purportedly taken by the petitioner although there is no evidence that he was credited for this work. An article entitled "Cigarette Trade of East and Southeast Asia Flourishing" (apparently from the November, 2001 edition of *Tobacco International*) features a photograph credited to the petitioner. The petitioner also submitted copies of articles from the April, May and July, 2001 editions of *Pop Star* magazine that credit the petitioner for "assistant styling." The record contains no evidence that the petitioner's work for these magazines resulted in any critical acclaim, let alone constitutes original contributions of major significance to the field of commercial photography.

The petitioner submitted six recommendation letters from individuals familiar with his career. The director stated that these letters did "not appear to be from well-known experts in the field whose opinions could be considered objective." We phrase our concerns differently. While they provide relevant information about an alien's experience and accomplishments, recommendation letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we consider the letters in relation to the other, previously discussed evidence of the petitioner's work.

Founder and Artistic Director of Second Generation, a production company for Asian American performances, was the petitioner's co-star in the Taiwanese television program "Rock Shakespeare." states that he previously knew the petitioner "by reputation for many years" as a "member of the chart topping singing group 'The Red Hot Boys'" and as "an outstanding television host and talented & creative actor." heralds the petitioner as "a superstar artist" who belongs to "the elite group of extraordinary artists at the top of their field." explains that the petitioner's "versatility as a performer has made him one of the hottest stars in Taiwan, Hong Kong, China, and the Asian-American community around the globe." a national legislator of the Kuomintang Party in Taiwan, affirms the petitioner's talents and fame as a singer and performer in Taiwan and praises him as a "strong role model . . . for many Taiwanese youth, as well as a fine cultural ambassador for Taiwan to the rest of the world."

██████████ Manager of the Duchamp Art Company in Taiwan, affirms that the petitioner “was a very famous star in singing and acting in Taiwan, Hong Kong and China in the late 80’s and early 90’s” and was “one of the most loved celebrities in the region.” ██████████ states that the petitioner’s subsequent solo photography exhibition in Taiwan “was quite successful and received rare review from experts and peers, and also drew broad media attention.” ██████████ Director and Founder of the Taiwan International Visual Arts Center where the petitioner’s photography exhibition was held, also opines that the petitioner “is not only a talented entertainer but also an exceptional photographer.” ██████████ explains that “[t]hrough his numerous achievements in the entertainment field have brought him high fame and made him well known to every household in the [sic] Taiwan, Hong Kong & China, most notably as a member of Red Hot Boys, he has also had considerable success in the field of photography as well. In 2001, ██████████ presented an exhibit of his photographs, entitled ‘Blurry,’ to great acclaim at my gallery.”

██████████ Assistant Professor of Fine Art and Visual Communications at the New York Institute of Technology, also describes the petitioner as “a former member of the highly successful Taiwanese boy band, Red Hot Boys, as well as a professional photographer.” Professor Lin believes that the petitioner is an “extremely outstanding and uniquely talented” photographer. ██████████ Director of the Manhattan Office of the *World Journal*, a Chinese daily newspaper based in the United States, attests that she has seen the petitioner perform on television “as part of the very successful youth rock band, Red Hot Boys, which was hailed as one of the two hottest youth art groups in Taiwan at the time and also had won the hearts of millions of audiences in Mainland China and Hong Kong.” ██████████ also states that she has seen the petitioner’s performances as “a staring [sic] actor in a series of TV dramas on prime time Taiwanese television as well. His skills and natural facility as an actor are quite extraordinary; in particular, the way he integrates Chinese themes in Western style television, is amazing.” Director ██████████ describes the petitioner’s subsequent photography as “a testament to his versatility that he keeps exploring and challenging himself as a creative artist.”

The director found that the petitioner “enjoyed prominence” as a former member of the Red Hot Boys, but did not sustain that acclaim as a performer or photographer. We note that the director incorrectly stated that the petitioner had not been employed as a singer, actor or host in Taiwan since 1997. As discussed above, the record contains evidence that the petitioner was featured as an actor and reporter in Taiwanese television programs in 1998 and 2001 and also starred in a short Taiwanese – U.S. film in 1998. The director’s oversight has not prejudiced the petitioner, however, because the record does not establish that any of the petitioner’s work as a singer, actor, host, reporter or photographer made original contributions of major significance to Taiwanese pop music, television, film or to Taiwanese or American commercial or artistic photography. Although the evidence establishes that the petitioner was a famous pop star as a member of the “Red Hot Boys,” the record contains no primary evidence of the band’s or the petitioner’s contributions to Taiwanese pop music such as documentation of the band’s platinum albums. Similarly, while the record demonstrates that the petitioner has been featured in Taiwanese television programs (and one short film), the evidence submitted does not establish that his performances received critical acclaim or made any other significant contributions to Taiwanese television or film. Finally, although the record indicates that petitioner received limited critical acclaim for his photography exhibition, “Blurry,” and has worked as a professional photographer for two trade publications, this limited success as a nascent photographer is not consistent with the sustained national or international acclaim requisite to classification as an alien with extraordinary ability in the arts. Accordingly, the petitioner does not meet this criterion.

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

The director correctly determined that the petitioner did not meet this criterion through his work as a photographer. As previously discussed under the fifth criterion, the petitioner has exhibited his photographs only twice, including one group exhibition of student work. The *Taipei Times* article previously discussed under the third criterion favorably reviewed the petitioner's subsequent solo exhibition at the Taiwan International Visual Arts Center in 2001. Yet this single exhibition does not demonstrate sustained acclaim as a photographer and is insufficient to meet this criterion.

Although this criterion applies primarily to visual artists, we consider documentation of the petitioner's singing and acting performances under the comparable evidence provision of 8 C.F.R. § 204.5(h)(4). The petitioner submitted videotapes of two live concerts by the Red Hot Boys and other televised performances of the band. The petitioner claims that the band gave concert tours in Singapore, Mainland China, Hong Kong and Thailand, but he submits no documentation of those performances or other evidence to support his claim to international fame. The record also contains videotapes of the petitioner's performance as an actor in the Taiwanese television programs "Chicken Mum and Her Children" in 1992 and "Rock Shakespeare" in 2001. The director did not specifically discuss this evidence, which we find sufficient to establish that the petitioner's work as a performing artist has been displayed in a manner reflective of sustained national acclaim in Taiwan. Hence the petitioner meets this criterion through his performances as a singer and actor.

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

The petitioner claims to meet this criterion because he has "performed lead roles and acted star roles in art events and movies. He toured around the world to showcase his fantastic artistic skills" (emphasis in original). As previously discussed under the seventh criterion, the record contains no evidence of the petitioner's international performances.

Although the petitioner was apparently a critical member of the Red Hot Boys, the record indicates that he stopped performing with the band (or that the band dispersed) in approximately 1993, nearly a decade before his petition was filed. Consequently, his role in the band does not reflect the requisite sustained acclaim. His work as an actor and television host and reporter is also insufficient to meet this criterion. While the record indicates that the petitioner was featured in Taiwanese television programs, there is no evidence that any of these programs won critical acclaim, were commercially successful, or otherwise earned distinguished reputations. Accordingly, the petitioner does not meet this criterion.

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

The petitioner claimed eligibility under this criterion because "[h]e has published numerous CDs and Cassettes of his concerts and performances. There are also a huge number of movies where he acted leading roles, which are in wide circulating [sic] among all Chinese communities in the world. Many of his CDs and concert videos are best sellers." Although the petitioner submitted evidence of his recordings and performances, the record is devoid of any documentation of his commercial success. The regulation specifically requires box office receipts or sales of compact discs, cassettes or videos. The petitioner submitted no such evidence. Although the petitioner's resume states that five of the Red Hot Boys' recordings earned between two and five platinum

albums each, the record contains no corroborative evidence of such success. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A) only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The record indicates that the petitioner was a famous member of a pop band in Taiwan in the late 1980s and early 1990s who has been featured on Taiwanese television programs and has had one solo exhibition of his photography in Taipei. However, the record establishes the petitioner's eligibility under only one regulatory criterion. Consequently, he is ineligible for classification as an artist of extraordinary ability and the appeal will be dismissed.

ORDER: The appeal is dismissed.