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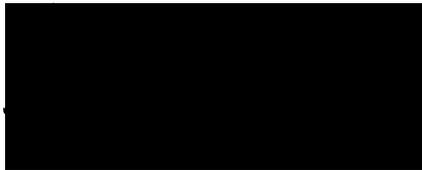
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 14 2005
WAC 03 212 52504

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maiperson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 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 14, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Peking Opera Performing Artist." 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 February 1997. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, 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 performing artist 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.

We note that the plain wording of this criterion requires “nationally or internationally recognized” prizes or awards for excellence in the field. A competition may be open to candidates from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is “nationally or internationally recognized.” The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his individual awards.

The petitioner submitted a certificate stating that he was “awarded the Golden Performance Prize of ‘Mei Lanfang Golden Prize Competition Show’ Painted Roles Group in 1994.” In support of this award, the petitioner submitted a published piece from *China Peking Opera* entitled “Regulations of Holding Mei Lanfang Gold Medal Competition.” The *China Peking Opera* piece indicates that the competition was national in scope and “broadcast live throughout the country” on China’s Central Television Station. Another article in the *Beijing Daily* states: “The competition’s Organizing Committee received applications from 49 performers of 21 Peking Opera theaters in 14 provinces, cities and autonomous regions. . . . TV audience and the Artistic Evaluation Committee will both vote and each will take 50% of the votes. The petitioner also submitted an incomplete translation from the *Chinese Drama Almanac 1993-1994* indicating that he won a “Meilanfang Golden Award” for Painted Face. Pursuant to 8 C.F.R. § 103.2(b)(3), however, any document containing foreign language submitted to Citizenship and Immigration Services 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 petitioner submitted a certificate stating that he was “awarded the ‘China Drama Plum Blossom Prize’ . . . for his outstanding achievements of performance on the theatrical stage of 1992.” The petitioner also submitted information from the *Fujian Province Opera Annals 1994*, which state: “The Plum Blossom Award is the top honor set to commend and reward middle-aged and young artists for their superb performance.” The petitioner also provided an incomplete translation from the *Chinese Drama Almanac 1993-1994* indicating that he won a Plum Blossom Award. The regulation at 8 C.F.R. § 103.2(b)(3), however, requires a full English language translation.

The petitioner submitted a certificate stating he was awarded the “Optimum Performance Prize” at the “National Young Beijing Opera Actors Competition” in 1987. In regard to the Plum Blossom Prize and Optimum Performance Prize, we note that the petitioner faced competition limited to his approximate age group within his field rather than from throughout his entire field. Such competitions offer no meaningful comparison between the petitioner and the most experienced and practiced actors in the field.

The petitioner submitted a “Certificate of Award” indicating that he “won First Prize in Peking Opera Performance at the Performance for Demonstration and Appraisal of Plays (Programs) Newly Created, Revised, and Arranged in 1988.” The record contains no evidence of publicity surrounding this performance or evidence showing that the petitioner’s award was widely recognized beyond the presenting organization.

The petitioner submitted a "Certificate of Honor" reflecting his "honorary participation in the Spring Festival Gala Show of 1996 organized by China Central TV Station." In support of his certificate, the petitioner submitted published material from *Frontier of Movie and Television Art* and the *Concise Radio and Television Dictionary* that discuss the gala show but do not mention the petitioner.¹ On appeal, the petitioner submits an article from a 1996 issue of *Chinese TV Weekly* indicating that the selection of actors for the gala show was "extremely rigorous," but once again there is no specific mention of the petitioner. The record contains no evidence showing the petitioner's "Certificate of Honor" is a nationally or internationally recognized prize or award, rather than simply an acknowledgment of his participation in the show.

While the record contains evidence of some degree of national publicity surrounding the above competitions and events, it is noted that such publicity focuses on the overall event rather than the petitioner as an individual.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any national performing arts awards subsequent to his arrival in the United States in 1997. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in China.

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 provincial level. Therefore, membership in an association that evaluates its membership applications at the local or provincial 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.

On appeal, the petitioner submitted a "Member Card" issued by the "Chinese Dramatists Association Beijing Branch." The petitioner also submitted a translation of the "Bylaws of the Chinese Dramatists Association." According to Article 13 of its bylaws, there is no indication that the Chinese Dramatists Association requires "outstanding achievements" of its members. Furthermore, it appears that the petitioner's admission to membership was evaluated at the local level (by the "Beijing Branch") rather than the national or international level.

¹ The published material in *Frontier of Movie and Television Art* provides a listing of the "famous names" of the performers at the gala show, but the petitioner's name does not appear among those listed.

In view of the foregoing, it has not been established that the petitioner's membership in the Chinese Dramatists Association required outstanding achievement or that his admission to membership was evaluated by experts at the national or international level.

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 general, 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

The petitioner submitted two brief articles appearing in *Theater and Movie* in 1990 and 1991. The 1990 article refers to the petitioner as a "student" and "pupil." Such descriptions are not an indication that the petitioner is one of that small percentage who has risen to the very top of his field of endeavor. The 1991 article devotes less than ten sentences to petitioner.

The petitioner also submitted a few articles appearing in local Chinese-language newspapers published in the U.S. Aside from the petitioner not being the primary subject of these articles, it has not been shown that any of these publications have a substantial national readership beyond Chinese language readership in a few localities. There is no specific data regarding their volume of U.S. readership. Because the overwhelming majority of the U.S. population does not read or comprehend Chinese, it has not been shown that an article appearing in such publications constitutes published material in the "major media."

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted a letter and newspaper article indicating that in 1994 he served as a member of the appraisal committee for the final round of the "National Young Beijing Opera Actors' Grand Competition Show." We note that this competition was limited to 18 to 45 year-olds.

In regard to the petitioner being named "guest professor of China Traditional Opera Institute" in 1995, there is no evidence showing that the petitioner evaluated the work of others.

Nor is there evidence showing that the petitioner has served as a judge subsequent to 1994 or at any national events here in the U.S. The statute, however, requires the petitioner's acclaim to be *sustained*.

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.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

On appeal, the petitioner submits two articles that he allegedly authored in *The World of Movie and Drama* in 1994 and 1995. These articles cannot be accepted as evidence, however, because they were not accompanied by a full English language translation as required by 8 C.F.R. § 103.2(b)(3). Nor is there any supporting evidence showing that the petitioner's articles are widely viewed throughout his field as significantly influential.

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

The AAO has consistently found that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. Virtually every actor "displays" his 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.

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

On appeal, the petitioner submits a letter from [REDACTED] Theater, who describes some of the petitioner's stage performances. This criterion, however, calls for commercial success in the form of "sales" or "receipts"; simply documenting the petitioner's participation in a few plays cannot meet the plain wording of the regulation. The record contains no evidence of documented "sales" or "receipts" to show that 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.

We find that the petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Beyond the petitioner's failure to satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), we note that 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*." [emphasis added] The director's decision correctly noted that there was no evidence showing that the petitioner has regularly performed as an actor since coming to the United States in 1997.

On appeal, the petitioner provides a listing of his acting performances, eight of which he alleges took place in the U.S. subsequent to 1996. The record, however, contains no evidence showing that the petitioner's U.S. acting performances were widely acclaimed or attracted a substantial audience. 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)).

In an attempt to overcome these obvious deficiencies, counsel argues that the director “incorrectly defines the petitioner’s field of endeavor as a ‘Peking Opera Performing Artist.’” The issue here, however, is not the petitioner’s “field of endeavor,” as counsel claims, but rather his “area of expertise.” See 8 C.F.R. § 204.5(h)(5). We find no error in the director’s analysis and note that, according to Part 5, “Additional information about the petitioner,” and Part 6, “Basic information about the proposed employment,” of the petitioner’s Form I-140, Immigrant Petition for Alien Worker, the petitioner listed “Peking Opera Performing Artist” under both “Occupation” and “Job title.” Counsel further states: “Although the majority of petitioner’s national acclaim in China has been through his performances, petitioner has also served as a judge, author, and instructor”

Counsel’s attempt to broaden the petitioner’s area of expertise at the appellate stage is not adequately supported by the evidence of record. Counsel specifically acknowledges that the vast majority of the evidence in this case relates to the petitioner’s career as a performer. We find no evidence showing that the petitioner’s primary means of employment in China ever involved serving as a competition judge (the evidence of record indicates that the petitioner only served as a judge at one event in July 1994), as an author (the record contains only two articles allegedly authored by the petitioner and no evidence showing that he was ever employed as a writer), or as an instructor (there is no evidence showing that the petitioner was employed as a nationally acclaimed opera instructor). In *Lee v. Ziglar*, 237 F.Supp.2d 914 (N.D.Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s ‘area of extraordinary ability’ as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, [redacted] extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Subsequent to his arrival in the U.S. in 1997, there is no evidence establishing that the petitioner has continued to work primarily in his area of expertise (performing Peking Opera). Nor is there any evidence showing that petitioner’s primary means of employment in the U.S. over the last several years involved performing Peking Opera (rather than employment in some unrelated occupation). Without evidence showing that the petitioner has regularly played a lead acting role in stage performances at top venues here in the United States and that such performances are his primary source of income, we cannot conclude that the petitioner meets the requirements of 8 C.F.R. § 204.5(h)(5).

For the reasons discussed above, the record is ambiguous regarding the petitioner’s acclaim throughout his native China, and there is no evidence showing that the petitioner has sustained whatever acclaim he earned in China since his 1997 arrival in the United States. Nor has the petitioner adequately demonstrated that he will “continue work in the area of expertise.”

It should be noted that the record contains a copy of the petitioner's passport, issued in Beijing by the Ministry of Foreign Affairs of the People's Republic of China on October 16, 1996. Under "Profession," the passport identifies the petitioner as a "Technician," despite the petitioner's claim that he is nationally recognized in China for his work as a performing artist. 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). 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.

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.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.