

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [REDACTED]
WAC 98 006 50318

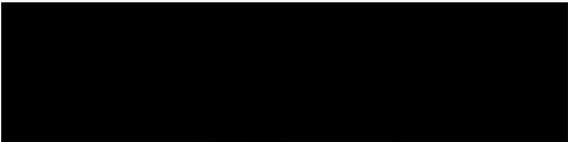
Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 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:



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.

Mai Plusa

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, California Service Center. In connection with the petitioner's Application to Register Permanent Residence or Adjust Status (Form I-485), the director served the petitioner with a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter 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.

On appeal, counsel asserts that the petitioner is unable to provide additional evidence relating to his awards, that he "did not fraud the USCIS" and that he "should not be responsible for the error made by the USCIS."

The director's decision contains no suggestion that the petitioner's case involves fraud. Rather, the director concluded that the petitioner had not demonstrated his eligibility for the classification sought. Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Thus, contrary to counsel's implication otherwise, the law allows the director to remedy an erroneous approval.

Other than a brief assertion regarding the petitioner's inability to acquire more evidence regarding his awards, counsel does not address any of the director's specific concerns regarding eligibility. We will briefly address those concerns below.

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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a Chinese musical saw performer, composer and educator. 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 that, he claims, meets the following criteria.¹

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 award certificates issued by various entities in Shanghai between 1985 and 1987 and a Second Prize Award from the 1984 National Builders' Song Collection Competition organized by the Chinese National General Union and Chinese Musicians Association. The NOIR noted the lack of evidence regarding the significance of these awards and determined that the awards "appear to be local in nature." In response, the petitioner asserted that the awards were 15 to 20 years old and that he was unable to obtain additional information about their significance. The director concluded that the petitioner had not overcome his concerns. On appeal, counsel reiterates the petitioner's claim that he is unable to obtain additional information about awards issued so long in the past.

From the information submitted, it is clear that Shanghai entities issued all but one of the petitioner's awards. Thus, we affirm the director's conclusion that these awards appear to be local. According to 8 C.F.R. § 103.2(b)(1), the unavailability of evidence creates a presumption of eligibility. Regardless, even if the petitioner had established that the National Builders' Song Collection Competition prize was a nationally recognized prize, it was awarded in 1984, 13 years before the petitioner left China and filed the instant petition. A petitioner must demonstrate *sustained* acclaim as of the date of filing. Without persuasive evidence of acclaim more proximate to the date of filing, a 13-year-old award is not evidence of sustained acclaim.

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.

The petitioner submitted membership cards for the Chinese Musicians Association, the Shanghai Accordion Association and the Shanghai Musical Saw Association. The petitioner submitted information from an unknown source indicating that the China Saw Society was established on April 14, 1988 and has about 60

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

members. While the information indicates that the saw is difficult to play, it does not discuss the membership requirements of the society. ██████████ President of the Anhwei Association, U.S.A., purports to confirm that the petitioner is a member of the Shanghai Musicians Association and "our association."

In the director's notice of intent to revoke, he noted the lack of evidence that any of the above associations required outstanding achievements of their members. Rather, the director determined that the associations appeared to be open to members of a field. In response, the petitioner submitted evidence that he was appointed as "the standing director of Handsaw Speciality [sic] Committee of Shanghai Association of Musician" on April 16, 1997. ██████████ Head of the Shanghai Association of China Music Saw, asserts that the petitioner is a council member of the Shanghai Association of China Music Saw. Mr. ██████████ explains that the China music saw is "a new and rare instrument in China" and, thus, there are not many players. Finally, the petitioner submitted evidence that he joined the Music Teachers' Association of California in May 2001, after the date of filing.

The director concluded that the petitioner had not submitted the minimum membership requirements for the above associations. Counsel does not contest this conclusion on appeal and we concur with the director. While some of the director's concerns are not supported by the record, they are also irrelevant. Specifically, the director asserted that the record contains no evidence of the petitioner's rank in these associations or the number of members. The record, however, indicates that the petitioner was a standing director of the "Handsaw Speciality [sic] Committee" of the Shanghai Association of Musicians and a council member of the Shanghai Association of China Music Saw. The record also indicates that the China Saw Society has "about" 60 members. Nevertheless, this information is irrelevant to this criterion. The criterion requires membership in an association that requires outstanding achievements of its members. Rank and size are not elements of this criterion. Ultimately, we concur with the director's conclusion that the petitioner has not established that any of the above associations require outstanding achievements of their members as judged by national (not local or regional) experts in the field.

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.

The petitioner submitted articles published in Chinese-language U.S. papers and local Shanghai papers. All but one of the U.S. articles are about a seminar at which the petitioner performed. While the petitioner did not provide full and complete translations, it appears from the excerpts that these articles were primarily about the seminar, not the petitioner. One U.S. article, however, does appear to focus on the petitioner. Similarly, one of the articles in the local Shanghai press is about the petitioner and another published the lyrics to one of his songs, while the remaining articles appear to focus on festivals at which the petitioner received local honors. The petitioner also submitted articles published in the Chinese *Xinmin Evening News*, *Unity Press*, *The Journal of Workers' Music* and *Teachers' Weekly*. The record does not contain the distribution data for the *Xinmin Evening News*, but the article in that paper focuses primarily on a festival hosted by a Shanghai entity at which the petitioner received a local honor. The remaining articles all appear to focus on the petitioner, but were published in 1985. Finally, the petitioner submitted one article published in an unidentified paper on an unspecified date.

In his NOIR, the director determined that the articles were mostly not about the petitioner, from "foreign based publications and local in nature." The director noted the lack of evidence regarding the circulation of any of the above publications. In response, the petitioner submitted articles in Chinese-language U.S. papers, all but one of

which are dated after the date of filing. Many of these articles are reviews of events where the petitioner performed. The director concluded that the petitioner had failed to overcome the director's concern regarding the lack of evidence regarding the circulation of any of the above publications. The petitioner does not contest this conclusion on appeal.

In general, we do not consider publications that are printed in a language that the majority of the population cannot comprehend to be major media. In addition, papers without a significant distribution outside of the Shanghai region are not major media. The publishers of *Unity Press*, *The Journal of Workers' Music* and *Teachers' Weekly* do not appear to be local entities. It is the petitioner's burden, however, to demonstrate that these publications are major media and distributed nationally. Even if we were to conclude that the articles that appear in three papers are about the petitioner and appeared in major media, they were all published in 1985, 12 years before the petitioner left China and filed the petition. Thus, these articles are not evidence of sustained acclaim after 1985.

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

██████████ President of the L.A. Chinese Musicians Ensemble asserts that the petitioner is one of 12 musicians certified by the Yamaha Music Foundation to pass the advanced level for Electronic Organists. Mr. ██████████ residing in the United States, does not explain how he has personal knowledge of this assertion.

██████████ President of the Anhwei Association, U.S.A., asserts that the petitioner "has obtained outstanding achievements in the field of music and contributes a lot to old music." ██████████ of the Shanghai Musical Saw Society asserts that the petitioner "has made great contribution to the art of China musical saw as well as other aspects in the field of music." Mr. ██████████ reiterates the petitioner's credentials and asserts that very few individuals play the China musical saw. Neither Mr. ██████████ nor Mr. ██████████ identifies any specific contribution or explain how it has influenced the field of music. Moreover, Mr. ██████████ residing in the United States, does not explain how he has personal knowledge of the petitioner's purported influence in China.

The petitioner also submitted a 1993 thesis acceptance notice from the Chinese Musicians Association. The association asserts that the petitioner's thesis will be included in their *Piano Teaching and Research for Colleges of Education*. The association predicts that the petitioner's paper "will have a significant realistic impact for piano education for adults." Predictions of future impact are insufficient. The petitioner has not established that his work is routinely assigned as course materials for music education students or that he has otherwise influenced the field of music education as a whole in China.

The director concluded that the record lacked evidence of the petitioner's influence on the field of music in China or the United States. The petitioner does not contest this conclusion on appeal and we concur with the director. The sole evidence to meet this criterion consists of the general assertions of witnesses that the petitioner does, in fact, meet this criterion. The witnesses do not explain their conclusion and the record contains no objective evidence confirming their claims. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

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

In 1987, the Children's Publishing Company published the book "Famous Chinese and Foreign Music from Movies and TV: Training Music Notes for Piano, Electronic Organ and Accordion," edited and "dubbed" by the petitioner. In 1990 the Shanghai Music Publishing Company published the book "Selection of Russian Popular Songs" edited and "dubbed" by the petitioner. On an unspecified date, the petitioner authored a manuscript on keyboard technique and improving teacher training. While the petitioner asserts that this manuscript was published as a book in 1993 by the college where he was teaching at the time, the record minimally supports this assertion. A 1993 thesis acceptance notice from the Chinese Musicians Association asserts that the petitioner's thesis will be included in their *Piano Teaching and Research for Colleges of Education*. The record does not include a copy of the actual publication and the petitioner has not established that it constitutes professional or major trade publications or other major media.

In response to the director's NOIR, in which he questioned the impact of the petitioner's book and manuscript, the petitioner submitted his articles on learning piano published in *Chi Am Daily* after the date of filing. In his final decision, the director concluded that the petitioner had not established the impact of his book and manuscript. The petitioner does not contest this conclusion on appeal.

We need not reach the director's concerns regarding the impact of the petitioner's written work because the regulation and 8 C.F.R. § 204.5(h)(3)(vi) requires that the articles be scholarly and that they appear in professional or major trade publications or other major media. The petitioner has not demonstrated that his 1993 book was published at all or that his 1987 and 1990 books were published in major media. Moreover, we are not persuaded that editing a collection of music constitutes authorship of scholarly articles. Even if we concluded that the 1987 and 1990 books were scholarly articles published in major media, they were published 10 years prior to the date of filing, and cannot be considered evidence of the petitioner's sustained acclaim as of that date. Finally, the articles in *Chi Am Daily* do not appear in major media and were published after the date of filing. As such, they cannot establish the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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

The director concluded that the petitioner had not established that he had performed at *artistic exhibitions or showcases*. The petitioner does not contest this conclusion on appeal. We concur with the director for the reasons discussed below.

The petitioner asserted that on July 8, 1997, Chinese television stations in Los Angeles "introduced" the petitioner and his song. The record contains no confirmation of this assertion from the television stations themselves. The petitioner also performed at a seminar in Southern California in 1997. The seminar does not appear to have been an artistic exhibition or showcase. Similarly, the petitioner performed at a teachers' festival in Shanghai. The petitioner has not established that a teachers' festival is an artistic exhibition or showcase. The petitioner was also invited to compose music for two television shows. The record does not establish that either show was intended to function as an exhibition or showcase of music. As stated above, the petitioner edited and "dubbed" two books of piano music. The petitioner has not explained how these books constitute artistic exhibitions or showcases. While a recording appears to have accompanied one of the books, a compact

disc is not an exhibition or showcase. Rather, in order for us to consider the compact disc, the petitioner would need to demonstrate sales numbers indicative of commercial success pursuant to 8 C.F.R. § 204.5(h)(x).

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

The director concluded that the petitioner had not established that his roles for various organizations were leading or critical. The petitioner does not contest this conclusion on appeal. While we concur with the director as discussed below, we also note the lack of evidence that most of the associations have a distinguished reputation nationally.

The petitioner was appointed to the following positions in the following years:

1. Senior Music Consultant for the Shanghai Dongfany Chinese Traditional Music Troupe in 1997,
2. Standing Committee Member for the Professional Committee of Shanghai Music Saw Society in 1997,
3. Editor of *Alumni Communication* published by the Shanghai Conservatory of Music Alumni Association at an unspecified time,
4. Professional Student and Instructor of Chords for Shanghai Conservatory of Music between 1982 and 1994,
5. A member of the editorial committee for the *Journal of Workers Music* in 1985,
6. Standing Director for the Handsaw Specialty Committee of the Shanghai Association of Musicians in 1997,
7. Council member of the Shanghai Association of China Music Saw in 1997 and
8. Music Director for "Sing Along in English" for [REDACTED] copyrighted in 2003.

The record does not contain organizational charts or other evidence suggesting the nature of the above roles. Moreover, almost all of the associations appear to be local to the Shanghai area. The only exception are the appointments listed in numbers 5 and 7 above. The record, however, contains no evidence of the number of editors or the nature of their responsibilities. Regardless, the appointment was in 1985, 12 years before the petitioner left China and filed the petition. Thus, it cannot serve as evidence of his sustained acclaim as of the date of filing. Finally, the record contains no evidence that Tokai Industries enjoys a distinguished reputation nationally or that serving as music director for a single project constitutes a leading or critical role.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a musician 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 indicates that the petitioner shows talent as a musician, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. While the evidence suggests that the petitioner enjoyed some national recognition prior to 1987, the evidence is not persuasive that the petitioner sustained any acclaim after that time. 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.