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U.S. Citizenship
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Services

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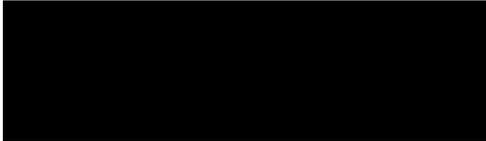
Petitioner:



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, 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 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 professional dancer. The petitioner submitted evidence of her awards and prizes, membership in dance and performing arts associations, published material mentioning her and published articles authored by her. The director determined that the evidence did not demonstrate that the petitioner was an alien with extraordinary ability and denied the petition. On appeal, counsel submits a brief, an additional article about the Paris International Ballet Competition and copies of documents submitted previously. Counsel's claims and the additional article do not overcome the insufficiency of the record and the substantive reasons for denial.

In his decision, the director stated that "[i]n order to qualify for this classification the self-petitioner must meet the very high standard of this definition." On appeal, counsel claims that the director's "contention . . . is inaccurate or at least ambiguous" and cites two unpublished Service decisions for the proposition that a finding

of sustained national or international acclaim is sufficient to establish that the alien has risen to the very top of his or her field. The decisions counsel references are not binding precedents. Pursuant to 8 C.F.R. § 103.4(c), designated and published decisions of the AAO are binding precedent on all Service employees in the administration of the Act. Unpublished decisions have no such precedential value. Nonetheless, we do not read the director's decision as imposing a more restrictive definition beyond the statute and regulation. The director's decision quotes Section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A) and 8 C.F.R. § 204.5(h) and explains that submission of evidence relating to at least three of the regulatory criteria will not mandate a finding of eligibility if the evidence does not meet "the statutory requirement of extensive documentation that demonstrates sustained national or international acclaim and recognition, and that demonstrates that the alien is one of the small percentage who has risen to the very top of the field of endeavor."

Counsel's other contentions, the evidence submitted and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

Evidence of a one-time achievement (that is, a major, international recognized award).

The petitioner claimed eligibility under this criterion by virtue of her receipt of four dance awards: 1) The "Gold Lion" prize awarded at the Venice Biennale International Dance Competition in 1999; 2) The "Grand Prix de Female" from the Sixth Paris International Dance Competition in 1996; 3) The [REDACTED] prize awarded by the Canadian Council for the Arts in 1996; and 4) Second Place in the Solo category at the Prix de Lausanne competition in 1987. The copies of the first three awards are accompanied by uncertified translations of the originals. The Prix de Lausanne award is untranslated. The petitioner submitted only one certification with her petition for the translation of documents from Chinese into English. The record contains no certification for the translations of the French and Italian documents submitted under this criterion. Because the petitioner failed to submit certified translations of these documents, we cannot determine whether the evidence supports her claim. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

We note that the director discussed these honors under the first criterion as lesser nationally or internationally recognized prizes or awards and found them insufficient because they appeared to be competitions for amateur or junior dancers. We do not reach this issue. Although the petitioner submitted other evidence regarding the significance of these competitions, the record contains no certified translations of the actual awards themselves. Consequently, we cannot determine whether or not they would meet either the one-time achievement or the lesser awards criteria.

(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 submitted copies of twelve certificates as evidence of her eligibility under this criterion. The director found insufficient evidence in the record to establish the significance of these awards and hence determined that the petitioner did not meet this criterion. Although the record contains no evidence regarding the significance of nine of these certificates, the petitioner submitted documentation of the guidelines and evaluation criteria for three certificates issued in China that merit brief discussion. First, the record contains a copy of a "Certificate of Award" of first-place for an ensemble dance presented to the petitioner at the Fourth Taoli Cup National Youth and Juvenile Dance Competition in China in 1996. An undated copy of the competition by-laws state that the competition is held annually and organized by the Ministry of Culture and the

Chinese Dancers Association to, *inter alia*, “generally review and assess the accomplishment of dance education in our country.” Prizes are awarded in five dance categories, three of which have separate sub-categories for “youth” and “juvenile” groups. One first prize, one second prize, one to three third prizes and “several excellent prizes” are awarded in each category.

Second, the petitioner was awarded “Best Interpretational Performance” in modern dance at the Sixth China Art Festival in Beijing in 1996. A preamble to the regulations for the China Art Festival promulgated in 1997 states that the regulations are being issued to allow the festival to be “more successful, more standardized and institutionalized.” The regulations state that the event is held every three years in different locations in China and that regional characteristics provide the theme for each festival. In addition to promoting “regional cultures,” the festival is also meant to “boost the regional economy, trade, science and technology, tourism and the international influence of China through cultural exchange.” Article 26 states that four distinctions are granted at the festival: Grand Prize, Award, Special Award, and Commemorative Award. These regulations were promulgated a year after the petitioner received her award and do not state that they apply retroactively. Accordingly, they have limited value for assessing the significance of the petitioner’s award.

Third, the petitioner received a “Certificate of Honor” from the Ministry of Culture of the People’s Republic of China (PRC) recognizing her as the “Most Outstanding Young Performer of the Nation for 1996.” A document entitled “Evaluation Criteria for Ministerial Citations for National Distinguished Cultural Regions, Groups and Individuals” dated February 18, 1997 states that the “Evaluation Criteria is [sic] formulated to encourage creativity and productivity of cultural workers and eulogize those regions, groups or individuals with major contributions to the construction of socialist material and spiritual civilization” and that such recognition is “the supreme national commendation.” Individual citation is only given to persons “working in the state cultural institutions or enterprises.” The evaluation criteria for individuals include “fervent attachment to cultural or artistic cause” and the selection is “conducted with a democratic, procedural and orderly mechanism of nomination and evaluation from the grassroots to basic unit and on to the authority of grant.” However, the evaluation criteria became effective three months after the petitioner received her award and apparently do not have retroactive effect. Hence the criteria are of limited value in assessing the significance of the petitioner’s award.

Fourth, the petitioner was jointly named “Champion of Modern Dance” with another individual at the “Lotus Award” national dance competition in 1997. This award was granted by the PRC Ministry of Culture and the Chinese Dancers Association. The guidelines for these awards state that the “Lotus Award is recognized as the national supreme distinction for Chinese dancers created for the purpose of commending China’s most distinguished dance professionals and the most outstanding achievements acquired by Chinese dancers.” Awards are granted in five categories including modern dance and are titled “Gold Lotus, Silver Lotus, Bronze Lotus.” The English translation of the guidelines is incomplete and does not include a provision in the original Chinese document stating that the guidelines became effective in 2001, four years after the petitioner received her award. Like the evidence accompanying the previous two awards, these guidelines thus have little value in assessing the significance of the petitioner’s award.

Even if these honors constitute lesser nationally recognized awards for excellence in dance, they were granted six to seven years before the petition was filed and do not reflect the sustained acclaim requisite for classification as an alien with extraordinary ability. We note that the petitioner also submitted evidence of a more recent award. The record contains a copy of a “Prix of Distinction” apparently awarded to the petitioner in 2000 and the transcript of a related speech by the French Minister of Culture. These documents are

accompanied by uncertified translations of the French originals. Without certified translations of these documents, we cannot determine whether the evidence supports the petitioner's claim. See 8 C.F.R. § 103.2(b)(3).

On appeal, counsel takes issue with the director's comment that the petitioner's awards appeared to be granted for amateur dancers or at "youth and junior dance competitions" and notes that nationally and internationally recognized awards for excellence in a given endeavor, for example, Olympic medals, may be earned by young or junior aliens before they turn professional. Counsel focuses on the wrong issue. We do not dispute that nationally or internationally recognized prizes or awards for excellence in dance may be awarded to young dancers. The issue is whether or not such awards demonstrate, reflect or are consistent with the sustained national or international acclaim requisite to classification as an alien with extraordinary ability. In this case the record contains acceptable documentation of the receipt and significance of only four awards. These awards were granted to the petitioner at least six years before her petition was filed and do not reflect the requisite sustained acclaim.

(ii) 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 director determined that the petitioner did not meet this criterion, but did not fully discuss the relevant evidence. The petitioner submitted documentation of her membership in the International Theatre Institute, the International Society for the Performing Arts and the Chinese Dancer's Association. The petitioner's membership certificate for the International Theatre Institute is dated April 16, 1998 and states that she is a "Professional Member" who has "demonstrated, to the best Satisfaction of this Panel, a high level of Professionalism by causing a tremendous Successes [sic] and Contributions to Performing Arts." However, the document also states that "[t]his Certificate is intended to identify the Bearer's affiliations to the Committee exclusively, and is not, in any manner, intended to show Bearer's level of achievements in particular Field(s)." The petitioner submitted a document entitled "Membership of ITI" that states that the International Theatre Institute (ITI) is a non-governmental organization formally associated with UNESCO whose purpose is to "promote international exchange of knowledge and practice in theatre arts (Drama, Dance, Music theatre) in order to consolidate peace and friendship between peoples, deepen mutual understanding and increase creative co-operation between all people in the theatre arts." The ITI is composed of national and associate centers in various countries. Individuals become members of ITI by joining one of these centers. Another document entitled "Asia-Pacific Regional Bureau of ITI/UNESCO" confirms that China is a member of this bureau, but does not state the membership criteria for individual artists from China. This evidence does not establish that outstanding achievements are a prerequisite for ITI membership.

The petitioner also submitted a copy of her International Society for the Performing Arts Foundation (ISPA) card that was issued to her as a "Professional Member. Dancer. Shenyang Contemporary Dance Academy." The petitioner submitted a printout from the ISPA website that explains that "Professional Membership shall be open to those persons whose achievements in performing arts are found exceptional and whose contributions are well recognized." The fourth section entitled "Membership Procedure" states that the "Board, in coordination with the Membership Chairman, shall establish a suitable procedure for evaluating applications for membership. A majority of Board members shall be required to accept or decline such applications." Yet the qualifications for board members and the membership application evaluation procedure are not included. Hence the evidence

is insufficient to show that an applicant's achievements are judged by recognized national or international dance experts.

The evidence regarding the petitioner's ISPA and ITI membership is also inconsistent with the requisite sustained acclaim. The record indicates that the petitioner was granted ISPA membership as a dancer with the Shenyang Contemporary Dance Academy on May 1, 1997. The petitioner's ITI membership certificate was issued in 1998. However, other documents in the record indicate that the petitioner arrived in the United States on a B-1 visa in 1996 and was then granted F-1 status that same year to study English as a second language. The record thus indicates that the petitioner has not remained active in her field since her arrival in the United States, seven years before she filed her petition.

The petitioner's membership identification card for the Chinese Dancers' Association is similarly insufficient to establish her eligibility under this criterion. The card states that the petitioner's work unit is the Liaoning Song and Dance Ensemble and that she is in the national dance department. The translation also lists "Occupation: Professional Dancer" although these words are not found on the card in Chinese. The card was issued in 1994. The petitioner submitted a copy of the constitution of the Chinese Dancers' Association that was adopted in 1996. Article 16 of this constitution states that membership is open to dancers who "have performed dancing, choreography, theoretical studies with provincial and national recognition for outstanding performances." The association's leaders are elected by the members. Applications are verified by the secretariat and submitted to "the appropriate panel for evaluation." The constitution does not state whether it has retroactive effect. Even if the Chinese Dancers' Association required outstanding achievements of its members when the petitioner was admitted, the petitioner's membership does not meet this criterion because it apparently ceased when she left China in 1996 and is thus inconsistent with the requisite sustained acclaim.

(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 director correctly determined that the petitioner did not meet this criterion. The record contains an undated article from *ParisMatch* accompanied by an uncertified English translation. A printout from a German website dated September, 2001 contains a one paragraph review of the Shenyang Modern Dance Company and lists the petitioner as one of three choreographers. The English portion of the printout does not translate the entire article in German and does not state where or when the performance was given. Without complete, certified translations we cannot determine whether these articles demonstrate the petitioner's eligibility under this criterion. See 8 C.F.R. § 103.2(b)(3).

A December 10, 1996 article from the *People's Daily Online* states: "[t]he 6th International Dance Competition has been formally opened in Paris. Hou Aihui, the famous ballet superstar from China, was selected as the recipient for Grand Female Prix.... 'Cinderella' is a showcase that has been premiered by Hou Aihui....As she returned to the curtain, the entire audiences [sic] stood up and gave her long extended applauds [sic]." A second article from the *People's Daily* and attributed to the *Xinhua* News Agency from December 2, 1996 discusses the Chinese contestants at the Paris International Dance Competition and briefly states that the petitioner received a gold medal for her "exceptional performance" and was "praised for [her] distinctive interpretation and profound terpsichorean skills." Although these two articles mention the petitioner and her performances, they were published seven years prior to filing and do not reflect the requisite sustained acclaim.

In his discussion of the evidence submitted under this criterion, the director stated that because the articles only mentioned the petitioner, they could “not be said to be ‘about’ the petitioner and her work as a dancer in any meaningful sense.” On appeal, counsel claims the director has thus engaged in “ad hoc law making” and cites the district court’s decision in *Muni v. INS*, 891 F. Supp. 440, (N.D. Ill. 1995) for the claim that articles do not need to feature the petitioner in order to “fit the boilerplate” of this regulatory criterion. Counsel fails to acknowledge, however, that the *Muni* court affirmed that “the satisfaction of the three-category production requirement does not mandate a finding that the petitioner has sustained national or international acclaim and recognition in his field” and that the issue in that case was the agency’s failure “to explain why Muni’s evidence did not meet the acclaim and recognition standard.” *Id.* at 446. As discussed above, two of the four articles submitted in this case were accompanied by incomplete and uncertified translations and cannot be considered pursuant to 8 C.F.R. § 103.2(b)(3). The remaining two articles discuss the petitioner’s performance and award at the Paris International Dance Competition, but they were published in 1996, seven years prior to filing. Hence they do not demonstrate the sustained acclaim requisite to classification as an alien with extraordinary ability.

(iv) 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 four certificates as evidence under this criterion. First, an “award of best judge” was jointly awarded to the petitioner along with three other individuals for “technical review and validation of the final scorings of the ’95 National Elite Dance Contest” by the Chinese Dancers Association on October 16, 1995. Second, a certificate dated February, 1997 and addressed to the petitioner by the Evaluation Committee of China Art Festivals states that “we hereby invite you to participate in the evaluation and assessment of dance performances under the context of ‘The Soul of Qin Dynasty.’ This certificate is deemed as an official commission for this position.” Third, a “certificate of commission” addressed to the petitioner from China Central Television states that “[y]ou are honorably retained as Vice Judging Panelist” for a program “that will be aired by August 1.” The certificate is dated May, 1998. Fourth, another “certificate of commission” addressed to the petitioner by the Dalian Television Company states “we hereby take honor to retain you as the jury for our production ‘Juvenile Dances’ dance competition that will be held by March 6 at our studio.”

The director determined that these documents did not meet this criterion because the “evidence does not establish that the petitioner was chosen because of her extraordinary ability and national or international acclaim or recognition in her field.” On appeal, counsel claims the director has invoked the reasoning rejected by the district court in *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994). We do not read the director’s decision as committing a “fallacy of circular reasoning,” as claimed by counsel. Rather, a more reasonable interpretation of the decision is that the director determined that the evidence submitted was not indicative of or consistent with the requisite sustained acclaim. As the *Buletini* court acknowledged, an “examiner must evaluate the quality ... of the evidence presented to determine if it, in fact, satisfies the criteria.” *Id.* at 1234. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h), must depend on the extent to which such evidence demonstrates or is consistent with the statutory and regulatory requirements of sustained national or international acclaim at the very top of the field of endeavor. In this case, only one certificate documents that the petitioner actually served as a judge. The other three documents are commissions for the petitioner to act as a judge in the future. There is no evidence that the petitioner actually conducted the commissioned judging. Thus the record shows only that the petitioner once judged the work of other dancers in a national competition in China in 1995, eight years prior to filing her petition and does not demonstrate sustained national acclaim.

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

The petitioner submitted copies and translations of undated articles authored by her and purportedly published in the Chinese magazine, *Dance*. The copies do not include the cover, title page or other information to identify their source. The articles are titled "On Dance Education and National Quality," "Interpreting Dance Career and the Interpretation of Dance 'Life'" and "My Sensation of 'Plateau Women.'" The director found that the articles were "not instructional or scholarly" and that the petitioner provided no evidence that *Dance* magazine was a professional or major trade publication. We note that the director also incorrectly stated that one of the articles explains "a poem [the petitioner] wrote on dance." In fact, the article, "My Sensation of 'Plateau Women'" begins by quoting a "popular folk song" of Yunan province. This oversight has not prejudiced the petitioner because although the articles may be scholarly, we agree that the record does not establish that *Dance* magazine is a professional or major trade publication in China.

On appeal, counsel contends that such insufficiency of the evidence should not result in a denial, but a request for evidence (RFE) and cites 8 C.F.R. § 103.2(b)(8) to support his claim. However, the regulation only requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The regulation does not require the director to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the regulation does not require solicitation of further documentation. In this case, the director did not deny the petition solely based on insufficient evidence of eligibility. Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. Although given the opportunity, the petitioner did not submit evidence regarding the nature of *Dance* magazine on appeal.

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

The petitioner did not claim eligibility under this category, but the director found that she met this criterion through her participation in the Venice Biennale, the Paris International Dance Competition and the Prix de Lausanne competition. As discussed above under the one-time achievement criterion, the petitioner did not submit certified translations of her awards from these competitions. Two articles concerning other performances of the petitioner are also accompanied by incomplete and uncertified translations. The record also contains photographs of the petitioner performing with the Liaoning Province Song and Dance Ensemble where she was greeted by Chinese President Jiang Zemin and four other photographs of various performances. These photographs are accompanied by incomplete translations of the captions and do not state the date or location of the performances. Two articles from the *People's Daily* confirm the petitioner's performance at the 1996 Paris International Dance Competition. However, this one performance seven years prior to filing does not show that the petitioner has displayed her work in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

Finally, the record contains conflicting evidence regarding the petitioner's future plans to work in the field of dance. Section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), requires that the alien demonstrate that he or she seeks admission to the United States "to continue work in the area of extraordinary ability." Former counsel's letter accompanying the petition stated that "[t]he alien is seeking to continue her work as a professional dancer in the United States upon the approval of the petition." The petitioner submitted a copy of a "Performer's Agreement" that was signed by her and the chief producer of the El Dorado Sister Academy of

Dance on March 3, 2003. However, Part 6 of the petitioner's Form I-140 states the title of her proposed employment as "Performer" and describes her job as "to suggest, compose, develop and present *musical performances*" (emphasis added). In addition, the record indicates that the petitioner has in fact been living in the United States since 1996 when she was granted nonimmigrant status to study English as a second language. It is incumbent upon the petitioner to resolve such an inconsistency in the record by independent evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without such evidence, we cannot conclude that the petitioner meets the requirement of section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii).

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act 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 evidence indicates that the petitioner was a successful dancer in China in the past, but the record does not establish that she was an alien of extraordinary ability at the time of filing. In addition, the record does not unequivocally demonstrate that the petitioner seeks to continue working in her field in the United States as a professional dancer. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.