

IDENTIFICATION NUMBER:  
PETITION NUMBER:  
OFFICE OF ORIGIN:



U.S. Citizenship  
and Immigration  
Services

B2

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date:

OCT 03 2005

SRC 05 008 51413

IN RE:

Petitioner:

[Redacted]

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:

SELF-REPRESENTED

INSTRUCTIONS:

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

*Mari Johnson*

S

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has earned sustained national or international acclaim at the very top level.

This petition, filed on October 12, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a Peking Opera performer. 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 2000. 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 performer in this country.

In support of the petition, the petitioner submitted blurred photocopies of two photographs of what are alleged to be the petitioner's performances. This evidence, however, was not sufficient to demonstrate the petitioner's sustained national or international acclaim, or that her achievements have been recognized in her field of

expertise. On November 3, 2004, the director denied the petition, finding that the petitioner's evidence did not satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3).

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. On appeal, the petitioner has submitted evidence pertaining to the following criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submits a Certificate of Award (dated September 1996) with an accompanying English language translation indicating that she "was granted the title: Excellent National Peking Opera artist." The record, however, contains no evidence of publicity surrounding this award or evidence showing that it enjoys a significant level of recognition. Simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. The petitioner must provide evidence showing that her award enjoys significant national or international stature. In this case, the record contains no documentation from the awarding entity or print media to establish that the petitioner's Certificate of Award is a nationally recognized performing arts award. Furthermore, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The translation accompanying the petitioner's Certificate of Award was not certified as required by the regulation.

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

The petitioner submits eight additional photographs of what are alleged to be her Peking Opera performances. On appeal, the petitioner has listed a dollar amount under each of these photographs, asserting that the dollar amount listed represents the box office revenue for the particular production shown in each photograph. The record, however, contains no evidence to support the petitioner's assertions. 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 this instance, there is no evidence (such as financial records) showing that the productions shown in the petitioner's photographs actually earned the dollar amounts appearing under the photographs. The plain wording of this criterion calls for commercial success in the form of "sales" or "receipts"; simply asserting that one's alleged productions grossed varying revenue amounts cannot satisfy criterion. To satisfy this criterion, the petitioner must establish that her performances have consistently drawn larger audiences and/or higher box office grosses than most others in her field, at the national or international level. The record includes no such evidence.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

It should be noted that the record contains a copy of the petitioner's passport, issued in Liaoning by the Ministry of Foreign Affairs of the People's Republic of China on June 30, 1999. Under "Profession," the passport identifies the petitioner as a "Manager," despite the petitioner's claim that she is nationally recognized in China for her work as a Peking Opera performer. 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.

Furthermore, in regard the photographs submitted in support of this petition, while we cannot state with certainty that the performer in these photographs is not the petitioner, we note that a recent photograph of the petitioner attached to her Form I-485, Application to Register Permanent Residence of Adjust Status, bears little resemblance to the woman in the Peking Opera photographs.

Review of the record does not establish that the petitioner has distinguished herself as a performer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record contains no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.