U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B2

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 02 210 50196

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

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 the petitioner had not established that he qualifies 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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on June 5, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese Peking Opera Actor." 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 June 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.

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.*

The petitioner submitted a "Flushing 2000 Millennium Award" for his participation in the "Community Sidewalk Festival" sponsored by the "Flushing Chinese Business Association" and the "Korean-American Association of Flushing." This award is reflective of local recognition rather than national or international recognition.

The petitioner submitted a Certificate of Award (dated August 15, 1998) with an accompanying English language translation indicating that he received an "Excellence Prize of Wu-Sheng Group in the National Kun Opera Competition of Stage Performance in 1998." The record contains no evidence of publicity surrounding this competition or evidence showing that the petitioner's prize enjoys a significant level of recognition.

In response to the director's request for evidence, the petitioner submitted a Certificate of Honor and accompanying English translation indicating that he "participated in the rehearsals and performances of . . . "Monkey King" in the United Chinese New Year [sic] Eve Show (1999) of China Center TV Station." The petitioner offers no evidence showing that this certificate is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of his participation in the show.

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 English translations accompanying the petitioner's award certificates were not certified as required by the regulation.

In this case, the record contains no documentation from the awarding entities or print media to establish that the petitioner's awards are nationally recognized performing arts awards.

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

The petitioner submitted evidence of his membership in the "World Association of Beauty Culture" and the Association of Chinese Artists. The record contains no evidence of the bylaws or official membership requirements for these associations showing that they require outstanding achievement in the performing arts. Assertions from the petitioner regarding the exclusive nature of their membership requirements are not adequate to satisfy the "extensive documentation" requirement for this classification set forth at section 203(b)(1)(A)(i) of the Act. According to the translation accompanying the petitioner's membership card from the Association of Chinese Artists, the petitioner's membership grade is listed as "Second-Class Performer of State." The petitioner does not explain how being a "Second-Class Performer" indicates that he is one of that small percentage who have risen to the very top of the performing arts field. We further note that the petitioner's "Working Unit," the Shandong Kun Opera Troupe, is a provincial organization rather than a national or international organization.

We find no evidence showing that admission to membership in the preceding organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

> *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 regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, serving as a judge for a national competition involving professional performers is of far greater probative value than serving as a judge for a local competition involving amateurs.

In response to the director's request for evidence, the petitioner submitted an April 12, 2003 letter alleged to be from [redacted] Vice Director of the [redacted] He states: "I write this letter to certify that [the petitioner] was a judge of the Artist Evaluation Committee of Shandong Province from July to September in 1992, responsible for the work of Kun Opera – a Chinese local opera."

[redacted] letter does not indicate the level of expertise of the individuals evaluated by the petitioner (i.e.- novice, amateur, or professional). Aside from the brief letter from [redacted] the record contains no further documentation relating to the petitioner's work for the Artist Evaluation Committee of Shandong Province. We cannot ignore, however, that the statute and regulations require "extensive documentation" of sustained national or international acclaim. The petitioner's failure to submit contemporaneous evidence relating to his involvement is a significant omission from the record. Without evidence showing that the petitioner's work for this committee involved evaluating professional performers at the national level, we cannot conclude that the petitioner meets this criterion. Furthermore, we find that the petitioner's brief period of work for the Artist Evaluation Committee in 1992 is not adequate to satisfy the statute's demand for evidence of *sustained* national or international acclaim.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a one-sentence "Notarial [sic] Certificate" stating that he "worked as a professional Kun Opera actor in Shandong Kun Opera Troupe from August 1975 to October 1996." This certificate was issued by a Notary in the Shandong Notary Public Office, rather than by an official of the Shandong Kun Opera Troupe. The record includes no evidence to support assertion that the petitioner served as an actor with the Shandong Kun Opera Troupe. Nor is there any evidence showing that this opera troupe has earned a distinguished reputation when compared to other Peking Opera troupes throughout China. We find the petitioner has not established that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). As noted previously, this regulation and section 203(b)(1)(A) of the Act require the petitioner's acclaim to be *sustained*. The record reflects that the petitioner has been present in the United States since June 25, 2000, but there is no evidence showing that the petitioner has been involved in any work related to Peking Opera performances during the last five years. Specifically, the petitioner has been the beneficiary of two approved P-3 nonimmigrant petitions that authorized him to work in the United States as an artist/entertainer from August 18, 2000 to August 18, 2002 (SRC 00 258 51021 and SRC 01 218 53738, filed by the Huaxia Chinese Opera Troupe and the Taishan International Culture Exchange Center, respectively). Astonishingly, the petitioner has submitted no evidence of his work as a performer even during that authorized two-year period. Based on the lack of evidence that the petitioner has been working in his area of expertise, he has not established the *sustained* national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

It should be noted that the record contains a copy of the petitioner's passport, issued in Shandong by the Ministry of Foreign Affairs of the People's Republic of China on May 11, 2000. Under "Profession," the passport identifies the petitioner as a "Manager," despite the petitioner's claim that he is nationally recognized in China as an 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.

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 arrival in the United States in 2000.

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.

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.