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FILE: [REDACTED]
EAC 02 231 50465

Office: VERMONT SERVICE CENTER

Date: OCT 11 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:

[REDACTED]

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 27, 2002, seeks to classify the petitioner as an alien with extraordinary ability as an 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 13, 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 an actor 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 the following:

1. Award certificate (1993) stating that he won a “‘Yiping’ award for young adults and adults in the national Peking opera TV competition”
2. Award certificate (1996) stating that he won a “‘Yiping’ award for young adults and adults in the national Peking opera TV competition”
3. Certificate issued by the Qi Shu Fang Peking Opera Association of New York for his “outstanding contribution in 2001 Peking Opera Festival”
4. Certificate of Appreciation (2001) for his “performance and support at the ‘Standing for Freedom’ Concert benefiting the 911 victims”
5. Award certificate (1994) stating that he won “first prize in ‘Shuangfeng Cup’ award for young adult actors in Shandong Province Peking opera competition”
6. Award certificate (1997) stating that he won “second prize in the national Peking opera TV Competition for adults organized by Shandong Province Television Station”

Items 3, 4, and 5 are reflective of local or provincial recognition rather than national or international recognition. In regard to items 1, 2, and 6, there is no evidence of publicity surrounding the petitioner’s awards or evidence showing that they enjoy a significant level of recognition. Simply receiving an award certificate with the word “national” in the title does not satisfy this very restrictive criterion. Because the statute requires “extensive documentation” of sustained national or international acclaim, the petitioner must submit contemporaneous evidence showing that his awards enjoy significant national or international stature.¹ 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.

The petitioner also submitted a letter from [REDACTED] Chinese-American Arts Council Inc., New York, who states that his organization “presented the only international gold award to [the petitioner] for his extraordinary ability in the art of Peking Opera on October 21, 2001.”

The petitioner also provided a letter from [REDACTED] President of the Qi Shu Fang Peking Opera Company, New York, who states that her organization “presented the Peking Opera Master Award to [the petitioner] to honor his achievement in the art of Peking Opera” on December 20, 2001.

¹ For example, large-scale competitions typically issue event programs listing the order of events, the name of each specific event, and the names of the participating performers. At a competition’s conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the competitions in which he received awards.

We find that the preceding awards from the Chinese-American Arts Council Inc. and the Qi Shu Fang Peking Opera Company are reflective of institutional recognition, rather than national or international recognition.

In response to the director's request for evidence, the petitioner submitted a Certificate of Appreciation issued by the "The Board of Trustees and President of the Brooklyn Botanic Garden" thanking the petitioner for his "support of and participation in Brooklyn Botanic Garden's Fifth Annual Family Party" on June 3, 2003. This evidence cannot be accepted, however, because it came into existence subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Aside from the issue of the date that this evidence came into existence, there is no evidence showing that this certificate is a nationally or internationally recognized award for acting excellence, rather than simply an acknowledgment of the petitioner's participation in a local event.

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.

In response to the director's request for evidence, the petitioner submitted evidence of his membership in the "Shandong Branch" of the "China Dramatist Association." The record, however, does not include the membership bylaws or official admission requirements for this association. There is no evidence showing that admission to membership in this association required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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 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 an incomplete translation of an article appearing in a Chinese-language newspaper published in New York. Pursuant to 8 C.F.R. § 103.2(b)(3), however, 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. There is no indication that the petitioner is the primary subject of this article. If the petitioner's acting talent is not the main subject of the article, then it fails to demonstrate his individual acclaim. Furthermore, it has not been shown that this newspaper has a substantial national readership beyond Chinese language readership in New York. There is no specific data regarding the newspaper's 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 a publication constitutes published material in the "major media." In this case, we find that the evidence presented by the petitioner is not adequate to show that he has been the primary subject of sustained major media attention.

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.

The petitioner submitted a certificate dated July 14, 1997, which states: "Please be kindly informed that you have been invited to work as an [sic] judge for the 1997 Shandong Province Peking Opera Competition." There is no evidence showing that the petitioner actually accepted this invitation, nor any information regarding the level of expertise of the individuals to be evaluated by the petitioner (i.e.- novice, amateur, or professional). Aside from the one sentence of text appearing on this certificate, the record includes no further information regarding this provincial competition. We cannot ignore, however, that the statute and regulations require "extensive documentation" of sustained national or international acclaim. Without evidence showing that the petitioner's activities at this competition involved evaluating professional performers at the national level, we cannot conclude he meets this criterion. We further note that the statute and regulations require the petitioner's acclaim to be *sustained*. Subsequent to his entry into the United States in 2000, there is no evidence showing that the petitioner has served as a performing arts judge.

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.

On appeal, counsel asserts that the petitioner also worked as a judge at the “2000 China National Peking Opera Competition.” However, without documentary evidence to support counsel’s claim, his assertion will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

The petitioner submitted playbills, program booklets, and photographs relating to his stage performances. While this evidence shows that the performances took place, it does not establish commercial success. The plain wording of this criterion requires the petitioner to submit evidence of his commercial success in the form of “sales” or “box office receipts.” Acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. To satisfy this criterion, the petitioner must establish that his performances have consistently drawn larger audiences and/or higher box office grosses than most others in his field, at a national or international (rather than local or provincial) level. In this case, there is no evidence showing that the petitioner’s performances as a leading or principal performer drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

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).

Review of the record does not establish that the petitioner has distinguished himself as an actor 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.