

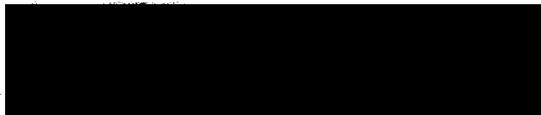


U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

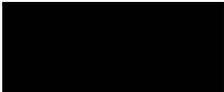
Date:

OCT 11 2005

SRC 05 001 51206

IN RE:

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:

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.

Marif Johnson

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. The director determined the petitioner had not established that she 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on October 1, 2004, seeks to classify the petitioner as an alien with extraordinary ability as an "Artist, Designer, Consultant." 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 1999. 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 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 "Certificate of Honor" issued by the "Ji Lin Province Public Government" in 1999 stating that she was "awarded the Silver Prize in the Fourth Session in Ji Lin Province Artistic Festival."

The petitioner also submitted a certificate issued by the "Ji Lin Province the First Session Artistic Festival Office" in 1989 stating that she was "awarded the First Prize of Arts in Ji Lin Province the First Session Artistic Festival."

The preceding awards reflect provincial recognition rather than national or international recognition. 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 translations accompanying the petitioner's award certificates were not certified as required by the regulation.

On appeal, the petitioner submits a "Certificate of Honor" issued by "The Business Department of the People's Republic of China" stating that her "book *Korean Clothing Line Collection* have [sic] received the honor of Outstanding Business-Art Publishing of 1995."

The petitioner also submits a "Certificate of Honor" issued by "The 1991 National Volunteer Association of China" stating that she "received the honorary title of Outstanding Volunteer of China."

There is no evidence of publicity surrounding the petitioner's receipt of the preceding awards or evidence showing that they enjoy a significant level of recognition. In this case, the record contains no supporting documentation from the awarding entities or print media to establish that the petitioner's awards are nationally recognized awards for artistic excellence. Furthermore, the translations accompanying the awards submitted on appeal were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant awards subsequent to 1999. The absence of such awards indicates that the petitioner has not sustained whatever acclaim she may have earned in China during the 1990's.

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 a document identifying her as a member of the "Yan Ji Province Song and Dance Ensemble."

On appeal, the petitioner submits a "Letter of Appointment" indicating that she served as a "Consultant of the Development and Reform Association of China."

The record, however, does not include the membership bylaws or official admission requirements for the preceding organizations. There is no indication that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership.

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 what she alleges is evidence of her authorship of an article entitled "The Nation in White" in *Cultural Apparel*. The translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, there is no evidence showing that this article was actually published under the petitioner's name or evidence of its significant national or international distribution. Nor is there supporting evidence showing that the petitioner's article is viewed throughout her field as significantly influential.

As noted previously, the petitioner's appellate submission includes a "Certificate of Honor" issued by "The Business Department of the People's Republic of China" stating that her "book *Korean Clothing Line Collection* have [sic] received the honor of Outstanding Business-Art Publishing of 1995." Aside from this certificate, however, there is no evidence showing that the petitioner actually published this book. For example, the petitioner has not provided the book itself or photocopies of its cover page and relevant portions of its text. Nor is there any evidence of the book's substantial national readership.

In this case, the petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself 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 August 27, 2004 letter accompanying the petition does not adequately detail how the petitioner intends to continue her work in the United States.

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.