

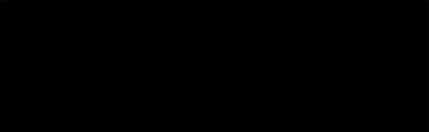


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FILE: [REDACTED]
EAC 03 172 50325

Office: VERMONT SERVICE CENTER

Date: OCT 26 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:



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.

Mai Johnson

S 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 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 May 17, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an instrumental musician. Specifically, the petitioner plays "a plucked string instrument that is part of the zither family" and "a Chinese Hammered dulcimer with a trapezoidal soundboard". 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 September 2000. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than 32 months), 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 musician 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. Certificate from the Chinese Folk Music Association stating that the petitioner "won [redacted] First Prize' in the 10th Anniversary Folk Music Competition" (1998)
2. Certificate from the Chinese Musician Association and the Chinese Folk Music Association stating that the petitioner "won the Second Award in the Chinese Harp Solo Performance of 'The 3rd Anniversary of the National Folk Music Performance'" (1996)
3. Certificate from the "Committee of Chinese Folk Musical Instrument of Chinese Folk Music Association" stating that the petitioner "won the First Award in the Chinese harp performance in the 1st Anniversary of 'Fragrant of Peach and Prune,' Teenagers Folk Music Concert" (1994)
4. Certificate from the Chinese Musician Association stating: "[The petitioner] is chosen as the outstanding national instrumental music educationist by the Chinese Musician Association. [The petitioner] makes great contribution in her teaching of the traditional Chinese musical instrument Chinese Harp, and Hammered Dulcimer." (1998)
5. Certificate from the Chinese Music Concert Committee stating that the petitioner was honored "for her great contribution in the 2nd Chinese Music Concert" (1990)
6. Certificate from the Beijing Cultural Bureau presented to the Beijing Quju Opera Troupe stating that it "won the First Award in the 86-89 Year of New Dramas Competition Performance in Beijing City" (1989)
7. Student Award from the Chinese Music Institution (1982)

There is no evidence of media publicity surrounding the petitioner's awards or evidence showing that they enjoy a significant level of recognition. Because the statute requires "extensive documentation" of sustained national or international acclaim, the petitioner must submit contemporaneous evidence showing that her awards enjoy significant national or international stature.¹ In this case, the record contains no documentation from the print media or from officials of the awarding entities to establish that the petitioner's awards are nationally recognized performing arts awards. In regard to item 5, there is no evidence showing that this certificate is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner's participation in the concert. Aside from being a local award (rather than a national award), item 6 is a group award making the petitioner's level of contribution difficult to ascertain. Finally, in regard to item 7, the student award, we note that such an award is institutional in scope and that experienced professionals in the petitioner's field of endeavor were excluded from consideration.

¹ For example, large-scale competitions typically issue event programs listing the order of events 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 she received awards.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant performing arts awards subsequent to 1998. 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 evidence of her membership in organizations such as the Chinese Folk Orchestral Association, the Chinese Folk Music Association, and the Chinese Musician Association. The record, however, contains no evidence of the bylaws or official comprehensive membership requirements for these associations.

The petitioner submitted two undated and unsigned letters bearing the seal of the Chinese Musician Association and the Chinese Folk Orchestral Association, but these letters have no address, phone number, or any other information through which these associations may be contacted. For this reason, the letters are of limited probative value.

The letter from the Chinese Musician Association states that those who apply for membership "must have outstanding achievement in the art performing field [sic] and high performing technique. Moreover, they should have at least two recommendation letters from two directors of the association."

The letter from the Chinese Folk Orchestral Association states:

The standards for the association to admitted new members are as the follow: First, this performer must also qualify for the professional post; Second, this performer must the first level musical instrument performer; Third, great contribution in the area of musical performing; In additional, two recommendation letters from members of the association is a must. [sic]

Neither of these brief letters specifically identifies what constitutes "outstanding achievement" or a "great contribution in the area of musical performing," nor do they establish that membership applicants are evaluated by recognized national or international music experts. In this case, there is no substantive evidence

showing that admission to membership in the preceding associations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her 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 articles appearing in Chinese-language newspapers published in New York and New Jersey, such as *World Journal*, *Singtao Daily*, and *Duowei Times*. Local media coverage of this kind is not evidence of national acclaim. There is no evidence showing that these newspapers have a substantial national readership beyond Chinese language readership in New York and New Jersey. Because the overwhelming majority of the U.S. population does not read or comprehend Chinese, it has not been shown that articles appearing in such publications constitute published material in "major media." Furthermore, we note that the majority of the articles submitted by the petitioner were accompanied by incomplete or summary translations. 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. In several instances, there is no indication that the petitioner is the primary subject of the published material. If the petitioner's musical talent is not the main subject of an article, then it fails to demonstrate her individual acclaim. In this case, there is no evidence showing that the petitioner has earned sustained acclaim in the national media of the United States or China.

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.

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.

The petitioner submitted two brief letters (five sentences or less) from July 1997 inviting the petitioner to serve as a judge at the "3rd Anniversary of the Chinese National Orchestral Music Festival." There is no evidence showing that the petitioner actually accepted this invitation to serve as a judge, nor any information regarding the level of expertise of the individuals to be evaluated by the petitioner (i.e.- novice, amateur, or professional). Further, we note the absence of published material or national publicity surrounding the petitioner's involvement in the festival. We cannot ignore that the statute and regulations require "extensive documentation" of sustained national or international acclaim. Without evidence showing that the petitioner's activities at this festival involved evaluating professional performers at the national level, we cannot conclude she meets this criterion.

The petitioner also submitted a certificate dated May 1998 allegedly issued by the "Chinese Musician Association." The certificate states: "This is to certify that [the petitioner] is employed as a judge of Classic Chinese Musical Instrument Inspection Committee." The petitioner also submitted two unsigned letters bearing the seal of the Chinese Musician Association, but these letters have no address, phone number, or any other information through which this association may be contacted. The first of these letters (petitioner's exhibit 23) states that the petitioner "is qualified for the judge position of Classic Chinese Musical Instrument."

The second letter (petitioner's exhibit 24) states that the petitioner was "appointed as the professional judge" of the "Classic Chinese Musical Instrument Inspection Committee."

The record, however, includes no evidence of the petitioner's activities as a judge for this committee. For example, the record lacks information regarding the nature of her duties in this capacity, the events at which she served as a judge, the names of individuals she evaluated, and their level of expertise.

In response to the director's request for evidence, the petitioner submitted another unsigned letter bearing the seal of the Chinese Musician Association. The letter, dated September 2003, states that the petitioner was "appointed as judge of National Folk Music Panel of Chinese Musician Association."

The petitioner also submitted an unsigned letter bearing the seal of the "Art Department of Culture Bureau of the People's Republic of China." This letter, also dated September 2003, invites the petitioner "to be a judge of National Folk Music Judge Penal [sic] in Chinese Art Anniversary."

The two invitation letters submitted in response to the director's request for evidence came into existence subsequent to the petition's filing date.³ A petitioner, however, 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). Subsequent developments in the petitioner's career cannot retroactively establish that she was already eligible for the classification sought as of the filing date. Aside from the issue of the date that these invitations came into existence, there is no evidence

³ These letters have no address, phone number, or any other information through which the issuing entities may be contacted.

of the petitioner's participation as a judge at any events in 2003.⁴ An invitation is not tantamount to participation.

In addition to the above deficiencies, we note that the statute and regulations require the petitioner's acclaim to be sustained. Subsequent to her entry into the United States in 2000, there is no evidence showing that the petitioner has actually served as a performing arts judge.

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 evidence of her authorship of one of what is alleged to be a series of publications entitled *Guide Book For Youth Learning Music*. The petitioner also submitted evidence of her authorship of an article entitled "The Performing Art of Yang Qin" in *Huayue Music*. There is no evidence of the field's reaction to these published works, nor any indication that they are widely viewed as significantly influential. Furthermore, there is no evidence showing that these publications enjoy substantial national or international readership.

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

The petitioner submitted evidence of her various musical performances. This particular criterion, however, is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. Virtually every musician "displays" her work in the sense of performing in front of an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's performances are far more relevant to the "commercial successes in the performing arts" criterion.

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 she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner asserts that she "played leading roles in more than on hundred [REDACTED] . . . shows." There is no indication that a show constitutes an "organization or establishment" for purposes of this criterion. Nevertheless, it has not been shown that that the petitioner's shows have earned a distinguished reputation at the national or international level. The evidence is not adequate to demonstrate that the petitioner has performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim

⁴ The plain language of this criterion requires "evidence of the alien's participation . . . as a judge of the work of others."

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In response to the director's request for evidence, the petitioner submitted an August 20, 2003 letter bearing the seal of the Beijing Qu Opera Troupe.⁵ The letter states that the petitioner earns a monthly salary of "RMB 6000 Yuan" and that she has the potential to earn an additional "RMB 1000 Yuan per performance." The petitioner also claims that she received "20 thousands [sic] RMB Yuan as a reward" from the Culture Bureau of Beijing City and "250 thousands [sic] RMB Yuan per year" in royalties from the sale of two of her recordings compilations. The record, however, includes no financial documentation (such as payroll records or income tax forms) showing the petitioner's actual earnings for any given period of time prior to the petition's filing date. As noted previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak* at 45.

In this case, the petitioner has failed to provide adequate documentation of her compensation prior to May 2003. Furthermore, the plain wording of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field. Finally, subsequent to her arrival in the United States in 2000, there is no indication that the petitioner earns a level of compensation that places her among the highest paid musicians in this country.

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 program booklets, correspondence, and photographs relating to her 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 her commercial success in the form of "sales" or "receipts." As noted previously, 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 her performances and recordings have consistently drawn larger audiences and/or greater sales than most others in her field at the national or international level. In this case, there is no evidence showing that the petitioner's performances as a leading or principal music performer drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

The petitioner also submitted evidence showing that her music was included in a compilation of recordings on a cassette entitled *Urban Background Music* and on a compact disc entitled *An Autumn Moony Night in the Han Palace*. In response to the director's request for evidence, the petitioner references a certification from the "Guang Zhou Audio-Video Press" indicating that her music has sold "more than twelve thousands [sic] volumes." The record, however, does not include a copy of this certification. Nevertheless, it is noted that the petitioner was not the only musician featured on these compilations making her level of contribution to their sales volume difficult to ascertain. Furthermore, it has not been shown that 12,000 copies sold is a substantial quantity given the immense size of China's population. We find no evidence showing that the

⁵ This letter has no address, phone number, or any other information through which this troupe may be contacted.



petitioner's musical recordings have generated greater sales than most other professionals in her field at the national or international level.

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.

Beyond the regulatory criteria, the petitioner submitted several letters of support. These letters of support indicate that the petitioner is a talented Gu Zheng performer, but they fall short of demonstrating her sustained national or international acclaim in the United States or China.

Review of the record does not establish that the petitioner has distinguished herself as a musician 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.

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.