



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B2

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 06 2005

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

60 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 (AAO) 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 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 September 29, 2003, 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 1997. 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 certificates and accompanying English language translations indicating that he received the following awards:

1. First Place Budding Prize of Second Joint Show of Secondary Art Schools in Shangdong Province (1992)
2. Peking Opera Stage Fighting Award for his performance in [REDACTED] in the Fourth Art Festival of Shenyang City (1994)
3. First Prize of Peking Opera Performance in the Cultural and Art Festival of Hebei Province (1995)
4. "First Place Prize of Peking Opera [REDACTED] in Stage Art Series of Artistic Performance Grand Contest of Chinese Traditional Opera" (December 28, 1997)
5. Performance Prize in the 1995 National Modern Play Exchange Show of Traditional Opera and Musicals
6. First Prize of Excellent Youth in the 1996 National Traditional Opera Exchange Show sponsored by the Ministry of Culture

Items 1, 2, and 3 above are reflective of local or provincial, rather than national or international, recognition.

In regard to item 4, the petitioner stated that this award was among "the many awards that have been granted to [him] in China when [he] was studying Peking Opera [REDACTED] Acting in the Traditional Opera School of Henan Province, China." We note here that, according to information stated on his Form I-140, Form I-485, and Form G-325A (all signed under penalty of perjury) and information contained in his passport, the petitioner last entered the United States on January 5, 1997 (as a B-2 nonimmigrant visitor). The petitioner does not explain how he was able to receive an award dated December 28, 1997 for an event that took place in China, when all of his Citizenship and Immigration Services' forms and the immigration stamps in his passport indicate that he has been physically present in the United States since January 5, 1997. 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.

In regard to the translations provided by the petitioner, the regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to Citizenship and Immigration Services 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.

The record contains no evidence of publicity surrounding the above competitions or evidence showing that the petitioner's awards enjoy significant recognition beyond the context of the event where they were presented. The level of recognition associated with the preceding certificates is not self-evident. In regard to items 5 and 6, simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. The petitioner must provide evidence to establish that his awards enjoy significant national or international stature. In this case, the record contains no documentation from the awarding entities or print media to establish that the above certificates are nationally recognized performing arts awards.

On appeal, the petitioner submits a certificate and non-certified translation indicating that he received an "Outstanding Performer" award during the Cultural Festival of Shandong Province (1995). This award, however, is reflective of provincial, rather than the national or international, recognition.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any performing arts awards subsequent to 1997. The absence of such awards suggests that the petitioner has not sustained whatever acclaim he may have earned in China.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

On appeal, the petitioner submits an article he authored, entitled "The Method of Putting on Makeup of the Role of 'Old Man,'" which he claims appeared in *Chinese Beijing Opera*. We note here that on November 24, 2003, the director issued a notice that specifically requested the petitioner to provide evidence under this criterion. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Even if we were to accept the article authored by the petitioner, it was unaccompanied by evidence (from an objective source such as a media guide, for example) indicating the national or international circulation of the magazine edition in which the article appeared. Nor is there any supporting evidence showing that the petitioner's article is widely viewed throughout his field as significantly influential.

On appeal, the petitioner indicated that additional evidence would be submitted to the AAO thirty days. The appeal was filed on April 21, 2004. As of this date, more than six months later, the AAO has received nothing further.

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." Subsequent to his arrival in 1997, there is no evidence showing that the petitioner's primary occupation in the United States involves Peking Opera. For example, there is no documentation showing that the petitioner has regularly taken part in performances here in the United States.

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 1997 arrival in the United States. Nor has the petitioner adequately demonstrated that he will "continue work in the area of expertise."

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he 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 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.

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.