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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: **SEP 22 2005**

SRC 05 011 51581

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.

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 the sustained national or international acclaim necessary to qualify 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 October 15, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese Dizi Maker." 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 October 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 as a musical instrument maker in this country.

In support of the petition, the petitioner submitted several photographs, but he did not explain who and what were shown in the photographs. The petitioner also submitted an article posted on www.szzwch.com, but the article was not accompanied by an English language translation. 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 preceding evidence was not sufficient to demonstrate the petitioner's sustained national or international acclaim, or that his achievements have been recognized in his field of expertise. On November 10, 2004, the director denied petition, finding that the petitioner's evidence did not satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3).

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. On appeal, the petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner re-submits the article posted on www.szzwch.com, but once again it was not accompanied by an English language translation as required by 8 C.F.R. § 103.2(b)(3). The record contains no evidence of this article's significant national or international distribution. Nor is there supporting evidence showing that the petitioner's article is viewed throughout his field as significantly influential.

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

The petitioner re-submits several photographs that he alleges represent the display of his work. These photographs show various unidentified musical performers holding or playing the dizi. We note, however, that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than the petitioner's occupation. Nevertheless, there is no evidence that identifies the names of these performers or which indicates that they utilize the petitioner's musical instruments. Furthermore, the names and dates of the exhibitions and showcases at which the petitioner's instruments were featured have not been provided. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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

The petitioner re-submits a photograph of what is alleged to be one of his musical instruments. On appeal, the petitioner asserts that the musical instrument in the photograph sold for \$4,000. The record, however, contains no evidence showing that the petitioner actually earned this amount. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. There is no evidence showing that the petitioner's compensation is significantly higher than that of other musical instrument makers.

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

The petitioner claims that the photograph of what is alleged to be his \$4,000 dizi constitutes evidence of his "commercial success." The plain wording of this criterion, however, indicates that it is intended for "performing" artists such as musicians and actors rather than musical instrument makers. Nevertheless, the regulation calls for commercial success in the form of "sales" or "receipts"; simply submitting alleged photographs of one's work cannot satisfy criterion. The record contains no evidence of documented "sales" or "receipts" showing significant national distribution of the petitioner's musical instruments or their widespread commercial success.

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 October 1999, there is no evidence showing that the petitioner's primary occupation in the United States involves designing and making musical instruments.

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 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 the 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.