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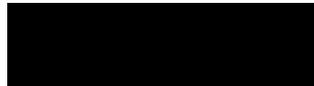
Office: TEXAS SERVICE CENTER

Date: **SEP 28 2005**

SRC 05 008 51302

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.

Mari Johnson

S 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 in the arts. 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on October 12, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a Peking Opera performer. 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 February 2001. 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 petition was unaccompanied by supporting evidence. On November 10, 2004, the director denied the petition, finding that the petitioner had not established eligibility pursuant to section 203(b)(1)(A) of the Act.

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.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submits a fill-in-the-blank "Artistic Achievement Award" certificate allegedly issued in 2002 by the Henry Street Settlement/Abrons Art Center for "unique contributions to the cultural diversity of the City of New York." This award constitutes local or institutional recognition rather than national or international recognition.

The petitioner also submits a Certificate of Award from the Guangdong Star Shining Art Festival (1997) and a Certificate of Honor from the Sichuan Province Television Station (1997), but these awards represent provincial recognition rather than national or international recognition.

The petitioner also submits three Certificates of Honor and accompanying English language translations indicating that she "participated in the Joint Party of Chinese New Year [sic] Eve" in 1996 and 1999. The petitioner offers no evidence showing that these certificates are nationally recognized performing arts awards, rather than simply an acknowledgment of her participation in the event.

The petitioner also submits certificates and accompanying English language translations indicating that she received the following:

1. Excellent performance prize in the 1997 National Traditional Opera Exchange Show
2. Plum Blossom Award of Chinese Traditional Opera (1997)
3. Excellent Prize of Lao-Dan Group in the 1998 National Traditional Opera Stage Performance Competition

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.

The record contains 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 her 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.

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

The petitioner submits evidence of her alleged authorship of an article in *Peking Opera Pages* entitled "Costumes and Stage Properties." The record, however, contains no evidence showing that this article was actually published 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.

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

The petitioner submits three photographs of what are alleged to be her Peking Opera performances.² The petitioner has listed a dollar amount under each of these photographs, asserting that the dollar amount listed represents the box office revenue for the particular production shown in each photograph. The record, however, contains no evidence to support the petitioner's assertions. 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)). In this case, there is no evidence (such as financial records) indicating that the productions shown in the petitioner's photographs actually earned the dollar amounts claimed. The plain wording of this criterion calls for commercial success in the form of "sales" or "receipts"; simply asserting that one's alleged productions grossed varying revenue amounts cannot satisfy criterion. To satisfy this criterion, the petitioner must establish that her performances have consistently drawn larger audiences and/or higher box office grosses than most others in her field, at the national or international level. The record includes no such evidence.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

It should be noted that the record contains a copy of the petitioner's passport, issued in Henan by the Ministry of Foreign Affairs of the People's Republic of China on July 14, 2000. Under "Profession," the passport

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 she received prizes.

² While we cannot state with certainty that none of these photographs show the petitioner, we note that a recent photograph of the petitioner attached to her Form I-485, Application to Register Permanent Residence of Adjust Status, bears little resemblance to any of the women in the Peking Opera photographs submitted on appeal.

identifies the petitioner as an "Engineer," despite the petitioner's claim that she is nationally recognized as a Peking Opera performer. 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.

Review of the record does not establish that the petitioner has distinguished herself as a performer 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 record contains no such evidence.

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.