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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
EAC 03 207 51620

Office: VERMONT SERVICE CENTER

Date: MAY 01 2006

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:

[REDACTED]

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 Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, the petitioner submits a statement and additional evidence.

At the outset, we note that the petition is signed by the petitioner under penalty of perjury and by counsel, declaring that the petition is prepared based on all information of which he has knowledge. The last question in Part 4 of the petition asks, in regard to the self-petitioner: "Has any immigrant visa petition ever been filed by or on behalf of this person?" The petitioner responded "no." In fact, on July 17, 2001, the petitioner filed another immigrant petition in his own behalf with receipt number EAC-01-225-50171. The director denied that petition on January 2, 2002. As the petitioner of the prior petition, the instant petitioner should have had knowledge of the prior petition. Moreover, the petition was prepared by another attorney at counsel's office. In light of the failure to disclose this information, the petitioner and counsel have significantly reduced credibility.

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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a Chinese Opera performer. 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 that, he claims, meets the following criteria.¹

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 several original "fill-in-the-blank" awards. While the certificates are preprinted, the petitioner's name is added in handwritten ink. Some of the awards are age-based, such as the Excellent Performance Award in the National Mid-age and Youth Peking Opera TV Performance Contest and the Best Performance Award in the final round of "Jing Jin Hu Han Four-City Youth Peking Opera Performance Contest." Others are purely regional, such as the New Performer Award in Tianjing City and the Excellent Protagonist in the Fourth Festival of Opera from Tianjing's Bureau of Culture. The director concluded all of the awards were regional.

As noted by the petitioner on appeal, four of the awards appear national, although only two of the national awards do not appear limited by age. The most experienced and renowned members of the field do not aspire to win youth awards. As such, they are not indicative of placement among the very few at the top of the field. Nevertheless, the petitioner submitted the certificate for his First Prize in the Iron Ox Cup National Peking Opera Contest. While Tianjing's Bureau of Culture is one of the sponsors, more national entities also sponsored the contest, including Chinese Central Television. The petitioner also won the "Golden Dragon Award" in the final round of the Beijing International Peking Opera Qun Opera TV Performance Contest sponsored by Chinese Central Television. Not every competition open to performers nationwide, however, is necessarily nationally recognized. Further, the distinguished reputation of a sponsor does not necessarily imply that the award itself is nationally recognized. Significant national competitions typically garner major media attention. The record lacks any evidence that the major media in China covered or currently cover the Iron Ox Cup National Peking Opera Contest or the TV performance contest. Moreover, the record lacks evidence as to the significance of the "Golden Dragon Award," such as how many individuals won this award and how it compares to other awards that might have been presented, such as first, second and third place. While we acknowledge that Ellen Somekawa, Executive Director of Asian Americans United, asserts that the

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Golden Dragon Award is equivalent to first place, she does not appear affiliated with the sponsor of that competition and does not explain how she has first hand knowledge of the significance of this award.

Counsel initially asserted that the petitioner won two international awards: the 2003 International God Award from the Renaissance Chinese Opera Society in New York and the 2002 Award of Excellence from the Philadelphia Chinese Opera Society (PCOS). The petitioner has performed with both troupes. The only evidence of the award from the Renaissance Chinese Opera Society is a letter from Feng-shi Jia, the president. Inexplicably, the address on the seal of the society does not match the address on the letterhead. Moreover, the address on the seal and the phone number on the seal and the letterhead match those of an accounting firm that advertises on the society's programs,² Jea and Ho CPA's. The petitioner has not established the significance of the society, which is somewhat questionable since it shares a floor and phone number with an accounting firm.

The record contains no evidence of any awards from PCOS. Regardless, recognition from one's employer is not indicative of national or international acclaim.

Finally, as stated above, the petitioner filed a previous petition seeking the same classification. That petition was supported by a completely different set of award certificates, although some of the translations are similar. 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).

In light of the above, the petitioner has not established that he meets this criterion.

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.

The petitioner submitted a "Club Member Identification" issued by China Opera Performer Club, Tiangjing Branch. The petitioner's title is given as "National First Rate Performer" and he is identified as the "Director of Tianjing Branch." The director concluded that the petitioner had not established that the club requires outstanding achievements for membership as judged by recognized national or international experts. On appeal, the petitioner asserts that he is a member of the Association of Chinese Dramatists, translated as "Club" by counsel's assistant. The petitioner does not submit a new, certified translation of the document. Thus, the record contains no evidence of the petitioner's membership in the Association of Chinese Dramatists. Moreover, the petitioner does not submit the Internet materials he claims support a finding that the association requires outstanding achievements of its members. The certified translation submitted initially indicates only that the petitioner is a member

² The petitioner submitted the programs as part of his initial submission.

of a local branch of the China Opera Performer Club, which implies that he was judged by local experts. Without evidence that the China Opera Performer Club requires outstanding achievements of its members as judged by national or international experts, the petitioner cannot establish that he meets this criterion.

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.

The petitioner submitted evidence of several news articles in local Philadelphia and New York Chinese-language publications. Most of the articles promote future performances or review past performances by troupes in which the petitioner performs and are not primarily about him. The director's discussion of this criterion is confusing. The director concludes that the petitioner has not demonstrated how "well received" the articles were or the circulation of the publications. The director also determined that the record did not "indicate independent experts in your field of endeavor consider authorship of scholarly articles about you or your field of expertise to be of major significance." Nothing in the plain language of this criterion requires that the published materials be "well-received," if there were even a possible means of demonstrating such receipt. We further note that this criterion does not require that the published materials about the alien be "scholarly" or that independent experts in the field consider such articles to be of major significance. We concur with the director, however, that in order to establish that the published materials appeared in major media, the petitioner must provide evidence of a national circulation.

On appeal, the petitioner submits a photograph of himself that purportedly appeared in the *People's Daily*. The petitioner did not submit a certified translation as required under 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3). Although the picture appears to have a caption that does not include the characters in the petitioner's name, the characters in his name appear next to the caption in a different type set, suggesting the petitioner may be the author of this article. Promotional materials authored by the petitioner are not as persuasive as independent journalistic coverage of the petitioner. Moreover, the article is dated eight days after the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

All of the published materials prior to the date of filing appear in Chinese-language newspapers outside of China. In general, newspapers in a language the majority of the citizens cannot comprehend cannot be considered major media. Moreover, in the instant case, the advertisements in the papers suggest that they are all local to either Philadelphia or New York, both places where the petitioner resided. Thus, they are not evidence indicative of national or international acclaim.

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 petitioner submitted a certificate affirming that in 1998, he was hired "as a member in the Judge Committee of the Third 'Peking Opera Karaoke Contest of China.'" The petitioner submitted another certificate confirming that in 1996, the petitioner was "hired as an opera art consultant by Tianjing Television Station." A third certificate confirms that the petitioner was hired as an art consultant and "member of the judge committee" for a Peking Opera concert in Guiyang City in 1999. A final certificate confirms the petitioner's position as an art consultant for the Peking Opera Club of Retired Workers, Nankai University. The director acknowledged this evidence, but appears to have considered it under the previous criterion. On appeal, the petitioner asserts that the Tianjing Television station is under the leadership of the Tianjing municipal government, making the appointment "official and formal." The petitioner also asserts that the phrase "senior professionals" was mistakenly translated as "retired workers" for Nankai University, one of the top ten universities in China.

While we do not require evidence that extraordinary ability is required for the judging position in order to meet this criterion, it is still the petitioner's burden to demonstrate the significance of the judging responsibilities. In other words, the judging responsibilities must set the petitioner apart from others in the field; otherwise, the statutory standard of sustained national or international acclaim would have no meaning. **More specifically, judging incident to one's employment, typical in the field or at a purely local level where one resides is far less persuasive than judging at the national level or a consistent pattern of local judging around the country.**

The record does not contain any evidence regarding the significance of the karaoke competition the petitioner judged. Thus, the petitioner has not established that this responsibility sets him apart from others in the field. **Without evidence³ as to the duties of an "art consultant," we cannot conclude that these positions involved judging the work of other opera performers. Moreover, these positions appear more akin to employment than selection as a judge.**

Finally, the petitioner submitted a single certificate confirming judging responsibilities in Guiyang City, beyond his place of residence. Once again, however, the record lacks evidence regarding the prestige of this competition or the petitioner's actual duties. Moreover, the competition was in 1999, four years prior to the date of filing. As such, it is not evidence of sustained acclaim as of that date.

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

³ Such evidence would need to originate from the organizations that hired the petitioner; we would not accept the petitioner's own self-serving statement as to his duties. Specifically, 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)).

The petitioner submitted letters from cultural organizations in New York and Philadelphia praising his abilities in general terms. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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 evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references nationwide who were previously aware of the petitioner through his reputation are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review or an interview. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the arts, it can be expected that the petitioner's work would be recognized for its influence. The record contains no evidence that the petitioner has impacted how Chinese opera is performed or taught. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner submits programs, reviews and photographs of his performances. The director's only statement relating to this criterion is that the petitioner failed to submit evidence "that independent experts in your field of endeavor consider your display of work to be of major significance." On appeal, the petitioner asserts that he has performed at significant venues.

This criterion relates to the visual arts. Thus, it is not clear that it is applicable to the petitioner's field of performing arts. Nevertheless, we will consider whether the petitioner's performances are

comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4). Performing on stage is inherent to the field of performing arts; not every on-stage performance can serve to meet this criterion. The petitioner's performances do not appear to be the type of exclusive showcases contemplated by this criterion. Thus, the petitioner has not established that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

On appeal, the petitioner asserts that the director failed to consider his leading roles. He submits a photograph of himself in the 1999 volume of "Peking Opera in China." While the characters for his name appear under his photograph, the petitioner did not submit a complete certified translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Thus, we are unable to determine whether or not this entry references the petitioner in a leading role. Moreover, the petitioner must not only demonstrate that he has played a leading or critical role, he must also demonstrate that the entity for which he performed the role enjoys a distinguished reputation nationally. Such evidence might include published material about the entity in major media. Finally, in order to demonstrate sustained acclaim, the petitioner must demonstrate acclaim up until 2003, when he filed the petition.

In light of the above, the petitioner has not demonstrated that he meets this criterion.

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

While a petitioner need not meet any particular criterion as long as he meets at least three, we simply note that the petitioner does not claim to meet this criterion despite its obvious relevance to his field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a Chinese opera 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 indicates that the petitioner shows talent as a Chinese opera performer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.