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U.S. Citizenship
and Immigration
Services

B2

[REDACTED]

FILE:

EAC 02 287 54269

Office: VERMONT SERVICE CENTER

Date: OCT 11 2006

IN RE:

Petitioner:
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:

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

Robert P. Wiemann, Chief
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. 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 argues that the service center did not fully evaluate her expertise.

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 September 18, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a performing artist.

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. Photograph of a trophy (inscription illegible) under which a caption appears stating: "Prize Cup of Appraised Excellence Number 1, from January 2000 'New Pingtan Program Demonstrating Performance' in Shanghai"
2. "Certificate of Prize" from the Ministry of Culture stating that the petitioner was "awarded Prize of Excellent Performance in 6th China Arts Festival Suzhou Pingtan competition"
3. "Certificate of Glory" (dated June 13, 2001) from the China Dialectical Vocal Artists Association inviting the petitioner "to participate in the China Eminent Dialectical Vocal Artists' Excellent Works Demonstrating Performance"
4. "Award Certificate" (dated September 7, 2000) stating that the petitioner "won the excellent performing award in Suzhou Lyrics Competition in the 6th Chinese Art Festival."
5. Certificate (dated September 1997) stating that the petitioner "won the excellent performing award in the 2nd Drama and Art Festival of Jiangsu Province"
6. "Honor Certificate" (dated November 1999) stating that the petitioner "won the excellent performing award in the 3rd Drama and Art Festival of Jiangsu Province"
7. Certificate (dated October 1994) stating that the petitioner won an excellent performer award at the 1st Drama and Art Festival of Jiangsu Province
8. Certificate (dated February 28, 1987) stating that the petitioner won the "excellent performer award among young actor [sic] in Sanqiang Cup Lyrics Contest of Jiangsu Province"
9. "Honor Certificate" from the Cultural Bureau of Suzhou City stating that the petitioner won the New Star Award (March 1999)

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 items 4 through 9 were not certified as required by the regulation.

In regard to items 5, 6, 7, 8, and 9, we find that these awards reflect local or provincial recognition rather than national or international recognition.

In regard to items 2, 4, and 8, we note that large-scale competitions typically issue event programs listing the award categories and the names of the participating contestants. At a competition's conclusion, results are normally provided indicating how each participant performed in relation to the other contestants in his or her artistic category. The petitioner, however, has submitted no evidence of an event program or the official comprehensive results from the competitions she won.

In regard to items 1 through 9, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. Further, the record includes no evidence that would demonstrate the number of awards given, the geographic area from which the

individuals eligible for consideration for these awards were drawn from, the criteria for granting these awards, the level of expertise of those considered, and the number of individuals eligible to compete. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence showing that the awards presented under this criterion enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or print media to establish that the petitioner's awards are nationally or internationally recognized awards.

In a May 26, 2005 letter responding to the director's request for evidence, the petitioner asserts that notices indicating that her biographical entry was to be published in *The Favorite Sons of China*, *Beautiful Motherland Large Picture Album*, *International Who's Who*, *Dictionary of International Figures*, *Expert-Scholar Directory*, *China Experts Achievements Directory*, and *Directory of Outstanding World Artists* are adequate to satisfy this criterion.¹ We cannot accept these notices as evidence, however, because they were not accompanied by full, certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, books of this size, with such a limited portion devoted to the petitioner, are more of a comprehensive directory rather than a special form of recognition limited to an elite few. Appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim. Interestingly, the record includes no evidence of the published entry about the petitioner appearing in these books or their date of publication. The notices submitted by the petitioner relating to the aforementioned publications will be further addressed under the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

In response to the director's request for evidence, the petitioner submitted a Certificate of Honor (dated January 13, 2004) from the Suzhou Broadcasting and Television Station naming her "one of the ten best loved Pingtan Performer." The petitioner's response also included a certificate (dated April 10, 2004) with the heading "THE 11TH CCTV INTERNATIONAL SINGING COMPETITION EAST COAST REGION (USA) EXCELLENCE AWARD." The preceding certificates reflect regional recognition rather than national or international recognition. Further, these certificates were issued to the petitioner subsequent to the petition's filing date. 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). Accordingly, the AAO is not required to consider these certificates in this proceeding.

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

¹ Aside from *The Favorite Sons of China* and *China Experts Achievements Directory*, the correspondence informing the petitioner of her inclusion in the remaining publications consisted of pre-printed, fill-in-the-blank, form-style letters of notification with the petitioner's name handwritten into a blank space in the salutation. The petitioner's inclusion in these publications is far more relevant to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and published materials about the alien, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

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.

In a September 12, 2002 letter accompanying the petition, the petitioner claims membership in the China Dramatists Association and the China Association of Folk Artists. The record, however, includes no evidence of her membership credentials for these associations. 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 response to the director's request for evidence, the petitioner submitted letters allegedly issued by the China Theater Artists Association and the Jiangsu Theater Artists Association stating that she is a member of these associations. These letters, however, include no address, telephone number, or any other information through which these associations may be contacted. Further, we cannot accept these letters as evidence because the English language translations accompanying them were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

In addition to the preceding deficiencies, the record does not include the membership bylaws or the official admission requirements for the aforementioned associations. There is no indication that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership. Thus, the petitioner has not established that she 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.

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

As stated previously, the petitioner submitted notices indicating that her biographical entry was to be published in *The Favorite Sons of China*, *Beautiful Motherland Large Picture Album*, *International Who's Who*, *Dictionary of International Figures*, *Expert-Scholar Directory*, *China Experts Achievements Directory*, and *Directory of Outstanding World Artists*. None of these notices were accompanied by evidence of the published entry about the petitioner appearing in the books, nor were they accompanied by full, certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). The plain language of this criterion, however, requires the submission of “published materials about the alien” including “the title, date, and author of the material, and any necessary translation.” The aforementioned notices cannot carry the same weight as the published materials themselves. Further, there is no evidence showing that the preceding publications qualify as major media. Nor is there any indication that the editors of these publications singled out the petitioner as superior to the scores of other artists featured in those same volumes. We cannot conclude that the petitioner’s limited entry into such sizable tomes would constitute qualifying published material about the petitioner and her work.

The petitioner submitted incomplete, non-certified English language translations of articles appearing in *Jiangsu Tong Zhan*, *Suzhou Daily*, *European Times*, *Quyí [Dialect Vocal Arts]*, *Taiwan Minsheng Newspaper*, *Macao Monthly Journal*, *World Daily*, *Macao Daily*, *People’s Daily Overseas Edition*, *Xinhua News*, *Ren Min Daily*, *Liberation Daily*, *Gusu Evening News*, *Ming Pao Daily*, *Xingdao Daily*, *Shanghai Radio and Broadcasting Journal*, *Suzhou Radio and Broadcasting*, *China Press* (dated May 22, 2005), and *Suzhou Evening News* (dated January 30, 2004). The regulation at 8 C.F.R. § 103.2(b)(3), however, requires the petitioner’s published material to be accompanied by full certified English language translations. Further, there is no evidence showing that the preceding publications had substantial national or international readership. Finally, we note that the articles appearing in *China Press* and *Suzhou Evening News* (submitted in response to the director’s request for evidence) were published subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak* at 45. Accordingly, the AAO will not consider the latter two articles in this proceeding.

The petitioner also submitted an article (published in English) appearing in a 1994 issue of *Kyoto Journal*. There is no evidence showing that this publication had substantial national or international readership. Further, the article, entitled “On the Road with the Suzhou Storytellers,” is about several artists and refers to the petitioner as an “assisting storyteller” rather than “the lead.” The article also states: “[The petitioner] has apprenticed with Jiang Yunxian, a top woman storyteller who performs alone. The solo act is a venerable tradition” The *Kyoto Journal* article does refer to the petitioner as a lead storyteller or discuss her solo performances.

On appeal, the petitioner submits a January 2001 article in *Quyí* that discusses two performances given by the Suzhou City Pingtan Troupe (of which she is a member). The petitioner, however, is not the main subject of

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 article. The plain language of this criterion, however, requires “published materials about the alien.” If the petitioner is not the primary subject of the material, then it fails to demonstrate her individual acclaim. We note that the petitioner’s name does not appear among the three individuals listed as the “first grade” actors of her troupe.

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

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 musicians is of far greater probative value than serving as a judge for a local competition involving amateurs or children.

On appeal, the petitioner submits an October 23, 1998 letter from Fu Jiao Long Zi School Number 4 stating: “[The petitioner] is hereby respectfully employed as appraisal commissioner for examination appraisal of graduating class for the year 1998 from Art-&-Music-for-Drama Class of this school.” This letter, however, includes no address, telephone number, or any other information through which this school may be contacted. Further, the plain wording of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” The record, however, includes no evidence of the petitioner’s activities as an appraisal commissioner for this local school. For example, the record lacks information regarding the nature of her duties in this capacity, the names of individuals she evaluated, and their level of expertise. We do not find that that evaluating drama students at a local school is evidence of national or international acclaim. Without evidence showing that the petitioner’s activities involved evaluating experienced performing arts professionals at the national or international level, we cannot conclude she meets this criterion.

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

The petitioner submitted several letters of support. We cite representative examples here.

Chung Long Lo, Executive Director, Institute of Chinese Culture and Arts, New York, states:

[The petitioner] is one of the best artists in China specialized in Ping Tan, a story telling with music instrument playing. This is a unique form of arts originated from Suzhou, China, where [the petitioner] is from. This form of arts incorporates singing, performing, music instrument playing, and acting to tell full-length stories. . . . [The petitioner] has brought this special art form to a higher stage. She is excellent in portraying various characters and plying instruments the perfect way. With a systematic training in the number one Ping Tan School of China, she has performed in numerous occasions and is greatly loved by her audiences.

Professor Emeritus of Chinese, Columbia University, states that he was introduced to the petitioner through a mutual friend. He states:

While [the petitioner] uses mainly the Suzhou dialect in telling her story, her singing, like all singing in foreign languages, is more universal in appeal. It is accompanied by her playing of a Chinese lute know as pipa. . . . I believe that, while [the petitioner] is doing quite well in China as a performing artist, she will get greater personal satisfaction by reaching a more diversified and sophisticated audience in the great cities of America

does not state that he was aware of the petitioner's reputation as a musician prior to their meeting at his home, nor does he identify an original music-related contribution of major significance specifically attributable to the petitioner.

Additional letters of support issued in Chinese (from organizations such as the "Youth Dancing and Singing Group of Suzhou Lyrics Group," "Literature Art Union of Jiangsu Province," "China Theater Artists Association," "Shanghai Eastern TV Station," "Jiangsu Province Theater Arts Association," and "Suzhou Broadcast & Television Station") provide a listing of the petitioner's awards and the places where she has performed, but they fail to specifically identify her major, original contributions in the field. None of the preceding letters from China include an address, telephone number, or any other information through which these organizations may be contacted. Further, we cannot accept these letters as evidence because the English language translations accompanying them were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

In this case, the letters of support submitted by the petitioner are not adequate to demonstrate that her work has had a significant national or international impact. We accept that the petitioner is a talented vocalist and musician, but the record lacks independent evidence demonstrating that her contributions have significantly influenced her field. For example, there is no evidence showing the extent of the petitioner's influence on other professionals in the music industry. The mere fact that the petitioner has performed at cultural events or made musical recordings does not demonstrate that such activities are nationally or internationally acclaimed as having major significance in the field. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance. Thus, the petitioner has not established that she meets this criterion.

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 a copy of a book published in 2004 entitled *Suzhou Pingtan – Theory and Performing*. The English language translation accompanying this evidence was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without evidence of substantial national or international readership, we cannot conclude that this book qualifies as a professional or major trade publication or other major media. Further, there is no evidence of the greater field's reaction to this book, or any indication that it is widely viewed as significantly influential. Finally, we note that the book was published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of*

Katigbak at 45. Accordingly, the AAO is not required to consider this book in this proceeding. The petitioner has not established that she meets this criterion.

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

The petitioner submitted event programs, photographs, and promotional material from numerous performances in which she participated as an ensemble member. This particular criterion, however, is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. It is inherent to the occupation of musician to perform on stage. 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 musical performances are far more relevant to the "commercial successes in the performing arts" criterion. The petitioner has not established that she meets this 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 submitted evidence of her performances with the Suzhou City Pingtan Troupe and the Institute of Chinese Culture and Arts of New York. There is no evidence showing that the Institute of Chinese Culture and Arts of New York has earned a distinguished national reputation or evidence establishing the relative importance of the petitioner's role when compared to that of other performers from this organization. Regarding the petitioner's role for the Suzhou City Pingtan Troupe, the petitioner's appellate submission includes a "Certificate of Ranking Title" declaring the petitioner a "2nd grade actress" in the Jiangsu Province. As stated previously, the petitioner's appellate submission also includes a January 2001 article in *Quyí* indicating that at least three members of the Suzhou City Pingtan Troupe had earned "first grade" status. The evidence submitted by the petitioner is not adequate to distinguish her from other successful members the Suzhou City Pingtan Troupe. In this case, we find the petitioner has not established that she performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

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 submitted a December 21, 2000 letter issued by the Jiangsu Provincial Society of Culture stating that it employed her as a lecturer for compensation of "10,000 yuans RMB per month." The record, however, includes no supporting financial documentation (such as payroll records or income tax forms) showing the petitioner's actual earnings for any given period of time. Further, 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. There is no indication that the petitioner earns a level of compensation that places her among

the highest paid performing artists in the United States or China. Thus, the petitioner has not established that she 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.

This criterion calls for commercial success in the form of “sales” or “receipts”; simply submitting event programs, photographs, promotional material, and compact disc recordings indicating that the petitioner took part in various performances cannot meet the plain wording of the regulation. The record includes no evidence of documented “sales” or “receipts” showing that the petitioner’s performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. In regard to the petitioner’s musical recordings, there is no evidence showing that her compact discs had a high national or international sales volume. The petitioner has not established that she meets this criterion.

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).

The petitioner’s appeal was filed on September 26, 2005. The appellate submission was accompanied by supporting evidence (which has been addressed in this decision). On the Form I-290B, Notice of Appeal to the AAO, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than one year later, the AAO has received nothing further.

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