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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date: **MAR 25 2008**

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the decision of the director “is erroneous because it fails to evaluate the documentation submitted and ignores key evidence in the record.”

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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, filed on August 16, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a performing artist. More specifically, the petitioner performs a traditional form of Chinese comedy known as “cross-talk” or “xiang sheng.” At the time of filing, the petitioner was working for the CBA Culture & Arts Center, Inc. in New York.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 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. Certificate of Recognition from the Beijing Branch of the Chinese Quyi Society stating that the petitioner "was awarded First Prize at Beijing's 'Ma San-Li Cup' Cross-talk Competition for his solo performance" (March 2004).
2. Certificate of Recognition from the Chinese Communist Youth League stating that the petitioner "was awarded the Grand Prize in 'The National Cross-Talk Competition'" (May 2001).
3. Certificate of Recognition from the Chinese National Youth Association stating that the petitioner "was awarded the title of 'Excellent Young Performer' at the 'Cross-talk Exchange Promotional Performance'" (March 2001).
4. Certificate of Recognition from the Performing Arts Division of the Jiangsu Province Cultural Bureau recognizing the petitioner "for his exceptional contribution to the Performing Arts of Jiangsu Province" (July 2000)
5. Certificate of Recognition from the Department of Performing Arts of China Central Television (CCTV) stating that the petitioner "received the Special Recognition Award at the National 'CCTV Cup Cross-talk Competition'" (March 1999).
6. Certificate of Recognition from the Chinese Communist Youth League stating that the petitioner "was awarded First Prize at the National University Students' 'Talkshow' Competition" (October 1998).

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to 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 English language translations accompanying the petitioner's award certificates were not certified as required by the regulation.

Items 1 and 4 above reflect local or provincial recognition rather than national or international recognition. With regard to the petitioner's "Excellent Young Performer" award (item 3) and his two certificates of recognition from the Chinese Communist Youth League (items 2 and 6), he has not shown that these awards

were open to established professionals already working in the field rather than limited to students or young performers. On appeal, counsel argues that the preceding youth awards were “given to individuals . . . beyond the juvenile age group.” Counsel further states: “It can be seen that [the petitioner] who was born in 1978, won the National Cross-talk Competition Grand Prize in 2001, when he was 23 years old. He was therefore an adult when he won this prize, and although the award was given by the Chinese Communist Youth League, the term ‘youth’ clearly included young adults.” Nevertheless, there is no evidence showing that the petitioner faced competition from throughout his field rather than limited to his approximate age group within that field. The petitioner’s receipt of awards limited by their terms to students or young adults is not an indication that he “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 petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

In regard to items 1 through 6 above, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, the petitioner has not submitted evidence showing that his awards commanded national or international recognition beyond the presenting organizations consistent with sustained national or international acclaim. The record contains no evidence establishing the significance and magnitude of the preceding competitions. Nor is there general information about the competitions (such as the eligibility criteria, the number of entrants, or the percentage of entrants who earned some type of recognition). National competitions typically issue event programs listing the names of the participating contestants and the award categories. At a competition’s conclusion, results are usually provided indicating how each participant performed in relation to the other contestants. The petitioner, however, has provided no evidence of the official comprehensive results for the contests in which he received awards. Nor is there supporting evidence showing that the recipients of the preceding honors were announced in major media or in some other manner consistent with national or international acclaim.

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.

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. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner submitted his membership credential for the Chinese Quyi Association and general information about the association, but there is no evidence (such as membership bylaws or official admission

requirements) showing that it requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. As such, the petitioner has not established that he meets this criterion.

Published material 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 general, 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 level from a local publication or from a publication printed in a language that the vast majority of the country's 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.¹

The petitioner submitted a non-certified English language translation of an article about him in *Art Stars*. The title of the article, its date, and author were not provided as required by the plain language of this regulatory criterion. Further, there is no evidence (such as circulation statistics) showing that *Art Stars* is professional or major trade publication or other form of major media. The petitioner also submitted incomplete, non-certified English language translations of August 27, 2001 and February 12, 1999 articles in *China Art News* and a July 27, 2000 article in *Arts News*. The record also includes incomplete, non-certified translations of a November 9, 2005 article in the *Epoch Times*, a November 9, 2005 article in *Sing Tao*, a November 12, 2005 article in *New York Community Times*, and a November 28, 2005 article in *Ming Pao*. The authors of the latter two articles were not identified as required by the plain language of this regulatory criterion.

In response to the director's request for evidence, the petitioner submitted information regarding the distribution of *Sing Tao Daily*, *Ming Pao*, *Wenyi Bao (Arts News)*, and *Zhongguo Yishu Bao (China Art News)*. The articles in these publications, however, were not primarily about the petitioner and only mention his name in passing. The plain language of this regulatory criterion requires that the published material be "about the alien." Further, the English language translations accompanying the petitioner's articles were neither complete nor certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

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.

The petitioner submitted six letters of recommendation. On appeal, counsel argues that the director ignored these letters from "leading critics and performers who attest eloquently to [the petitioner's] remarkable

¹ 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, for instance, cannot serve to spread an individual's reputation outside of that county.

accomplishments, success, and recognition as a Chinese cross-talk artist.” The letters of support submitted by the petitioner’s personal contacts will be addressed below.

Executive Director, CBA Culture & Arts Center, Inc., states:

[The petitioner] is one of the premier performers from China of a traditional form of comedy performance known as “cross-talk.” Cross talk is a type of Chinese stand-up comedy wherein the performer engages in story-telling, singing, instrumental music, joking through use of puns with the numerous Chinese dialects, and lively banter back and forth with a kind of “straight man” (hence the term “cross-talk”). [The petitioner] was trained from an early age in this art, and is widely recognized in China as one of the leading performers of this form of entertainment.

* * *

We were lucky that [the petitioner] accepted our offer to join our nationally known troupe of outstanding Chinese musicians, opera performers, and practitioners of traditional Chinese performance art forms. [The petitioner] brought his style of cross-talk to America, and has further adapted this century-old art for a multi-cultural audience which has been readily accepted by those attending our performances. Furthermore, [the petitioner’s] important status in promoting U.S.-China artistic exchange has been widely acknowledged by the mainstream entertainment companies. In the future, [the petitioner] will bring even more delightful fun and laughter to the America, the world’s greatest stage.

, who identifies himself as “a famous Chinese comedian of the older generation,” states:

I know that [the petitioner] is now a top cross-talk performer of the younger generation. I have seen him many times performing in Tianjin. He is an excellent example of this tradition, who not only knows the full repertoire of the old styles, he is constantly creating new materials for his performances. I really love his ability to mimic, and his outstanding use of dialect, two of the key parts of the cross-talk performance. His ability to improvise wonderfully humorous speech and to speak back and forth, either taking both roles of the conversation, or working with another artist, is marvelous to see. [The petitioner] has gained the reputation for being one of the best cross talkers in China. I am happy to see that the younger generation is now picking up this art, to carry on what we older hands have devoted our lives to. [The petitioner] has become very popular and has a big following, because he has developed the most “on the edge” style.

of Little Neck, New York, who identifies herself as “a recognized master” of cross-talking, states:

I am writing this letter on behalf of [the petitioner], who is a renowned master of the Chinese traditional comic art known as cross-talk. I can confirm that [the petitioner] is known throughout China for his genius in this classical form of comedy. . . . [The petitioner] is known for his brilliance in language use, his speed of speech and ability to use numerous Chinese dialects to great comic effect. He is also surprising because in contrast to his mild-mannered appearance, his satire can be

biting. I personally have long enjoyed and admired [The petitioner's] artistry and have seen him perform both in China and the United States. I can attest to the great enjoyment experienced by the large audiences who have attended his performances.

Scientific Director, Fondation Nationale des Sciences Politiques, and Research Director, Centre d'Etudes et de Recherches Internationales, Paris, states:

I am writing this letter in behalf of [the petitioner], a renowned artist in the traditional Chinese form of theatrical entertainment known as "cross-talk," or *xiang sheng*. As an expert on Chinese politics and culture, I am well aware of this form of performance art, and of [the petitioner's] stature in the field. I came to know of his work when he was visiting in Paris where he was pursuing a Master's degree, and performed his art at a theater here. Being fluent in Chinese, I was able to understand much of the performance, but I also knew there were many words in dialect and specialized references that are difficult for a foreigner to understand. What was not difficult to understand were the exquisite physical comedy that [the petitioner] was able to display, as well as wry contortions of the facial muscles, sounds that he produced, and brilliant mime, that required no knowledge of Chinese on the part of the audience to appreciate. [The petitioner] certainly lived up to his reputation as one of the leading masters of this art.

Co-director, Art Resources for Teachers and Students, Inc., New York, states:

We have seen [the petitioner] in performance on stage as he was invited by our organization to perform a number of times. [The petitioner] has brought with him his unique art form which was immensely enjoyed by our members. His work has brought a tradition to the United States from a far away culture, and that has now enriched the lives of New Yorkers who can easily appreciate its universal message. His message is that laughter will cross all borders and transcend all boundaries.

[The petitioner] of Elmhurst, New York, who identifies herself as "a renowned Chinese traditional musician," states:

[The petitioner] is a leading practitioner of the traditional stage performance art called "cross-talk".... [The petitioner] is considered a master of his generation in this art form. . . . I have been privileged to see [the petitioner] perform and I can say that he is quite a remarkable artist of this form of stage entertainment. I am certain that he is one of the most renowned performers of cross-talk in China today, and I am sure that he will be a wonderful cultural gem if he can come to the United States as a permanent resident.

The preceding letters of recommendation discuss the petitioner's activities and talent and a cross-talker, but they fail to demonstrate that he has made original contributions of major significance in his field. The letters include no substantive discussion as to which of the petitioner's specific achievements rise to the level of original contributions of major significance in the field. 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. While the petitioner is clearly admired by those offering letters of support, there is nothing to demonstrate that his work has had major significance in the field. For example, the record does not indicate the extent of the

petitioner's influence on other performers nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 (Commr. 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a performer who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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.

This criterion calls for commercial successes in the form of "sales" or "receipts"; simply submitting event programs from various stage performances that included the petitioner cannot meet the plain language of this criterion. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim. For example, there is no indication that the petitioner's performances in China or the United States consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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 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.