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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 06 014 50920

Office: NEBRASKA SERVICE CENTER

Date: APR 29 2009

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)

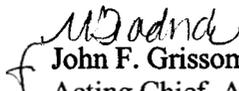
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition 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.

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 has 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 musician in Peking Opera Theater. 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.

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

The petitioner presented documentation indicating that he has received the following awards:

- An award certificate for outstanding performance and contribution to the 2005 Peking Opera Festival presented by the Qi Shu Fang's Peking Opera Company in 2005.
- A Certificate of Award for Outstanding Musician of Chinese Traditional Theater presented by the Chinese-American Arts Council, Inc. in 2005.
- A certificate for Extraordinary Expertise in the Chinese Performing Art presented by the CBA Culture & Arts Center 2005.
- Golden Award – Martial Arts Opera Performance at the China 4th National Peking Opera Artistic Festival presented by the Ministry of Culture, People's Republic of China (PRC) in 2004.
- “Golden Award of Music Accompany” at the Liaoning Provincial Masterpieces Peking Opera Performance Competition in 2003.
- “First Prize of Music Accompany” at the 5th Liaoning Provincial Opera and Drama Performance Competition in 2003.
- First Prize of Music Director at the Shenyang 5th Cultural Artistic Festival presented by the Shenyang Bureau of Culture in 2003.
- “The Rosa Award – Sheng Li Cup’ of Peking Opera Music Accompany” at the Liaoning Provincial 6th Opera and Drama Artistic Festival Performance Competition in 2002.
- First Prize at the 2001 China National Excellent Young Musicians of Peking Opera Performance Competition presented by the Ministry of Culture, PRC in 2001.
- First Prize of Music Composer at the Shenyang 4th Cultural Artistic Festival presented by the Shenyang Bureau of Culture in 1998.

In response to the director's request for evidence (RFE) dated August 2, 2006, the petitioner submitted documentation indicating that he received additional awards and recognition, including a Certificate of Achievement for Outstanding Achievement to the Arts issued by the Ba Ban Chinese Music Society of New York in 2006 and a Certificate of Award “for his outstanding contribution in the Peking Opera performance on April 23, 2006 as a drum player (orchestra director) presented by the Renaissance Chinese Opera Society, as well as “thank-you” letters and a certificate of appreciation for his participation in various events. However, all of these awards and recognition occurred after the filing date of the petition on October 20, 2005. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, they cannot be used to establish the petitioner's eligibility as of the date the petition was filed.

The petitioner, however, submitted no documentation to establish that any of these awards are nationally or internationally recognized as prizes or awards for excellence in the petitioner's field. In denying the petition, the director noted that at least two of the petitioner's awards appear to have been awarded from competitions that drew entrants from across China. However, the director concluded that the petitioner had failed to provide evidence that the awards were nationally or internationally recognized.

On appeal, the petitioner submits two letters from the Ministry of Culture for the PRC dated April 12, 2007 which state that in winning the Gold Prize award at the 4th Chinese Beijing Opera Art Festival, the petitioner "showed his extraordinary ability to act as orchestra conductor and drum performer for this Acrobatic Fighting Opera Arena." The letters indicate that the festival was a nationwide opera arts festival with more than 100 participants who were selected from the Peking Opera Theaters at city and provincial levels throughout China. The festivals were designed to develop and revitalize the Beijing Opera performance and "to discover and to select the talented young and middle artists and musicians of Beijing Opera for special training, and to promote and create the Beijing Opera performing arts in the 21st Century." While the minister's letters establish the festival award was open to participants at a national level, they do not provide evidence that the award was recognized beyond the awarding entity itself, such that the petitioner can demonstrate that it is nationally recognized as an award of excellence in the field.

Accordingly, 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.

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 work 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. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submitted documentation indicating that he is a member of the Shenyang Musicians Association and the Liaoning Provincial Drama Artists Association. The petitioner submitted no documentation such as membership requirements or bylaws to demonstrate that membership in these associations requires outstanding achievement of their members.

The petitioner also claims to meet this criterion based on his appointment as National 1st Grade Musician of Peking Opera in various performances. However, these appointments are not memberships in associations and therefore are not evidence that the petitioner meets this criterion. Accordingly, the petitioner has not established 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.

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a copy of a September 24, 2005 article from the *China Press* accompanied by an English translation that announces his invitation to perform the drum at a performance at the Lincoln Center. The article provided a biography of the petitioner, noting that “[h]e made a significant contribution to develop the Chinese traditional culture and art.” The petitioner also submitted a copy of a September 18, 2000 article from *Goslarsche Zeitung*, accompanied by a partial translation. The article purports to report on the petitioner’s performance at the 7th City Cultural Artistic Festival in Clausthal-Zellerfeld in Germany. In response to the RFE, the petitioner submitted an October 1, 2005 article from *Media & Entertainment Weekly*, which appears to be a repeat of the article published in the *China Press*. We note that the translations submitted by the petitioner do not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language “shall be accompanied by a full English translation which 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 newspaper articles do not identify the translator, do not certify that the translations are complete and accurate, and do not certify that the translator is competent to translate from Chinese into English or from German into English. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Also in response to the director’s RFE, the petitioner submitted a June 10, 2006 article from the *China Press*, a June 16, 2006 article from the *SinoAmerican Times*, a June 17, 2006 article from *MingPao*, an October 5, 2006 article from the *China Press*, and an October 19, 2006 article from the *Queens Chronicle* (New York). These articles suffer from the same deficient translations as previously noted. In addition, as these documents are dated after the filing date of the petition, October 20, 2005, they cannot be considered in this proceeding. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Accordingly, the petitioner has failed to establish 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 documentation indicating that he had been appointed as drum player or music director in various productions and received accolades for his performances. However, the petitioner submitted no documentation that these performances were of major contributions to the field of Chinese Peking Opera.

The petitioner also claims to meet this criterion based on his authorship of an article, *Talk About the Drum Playing in the Chinese Peking Opera Performing Art*, published in the *China Peking Opera (Monthly)* in 2004. However, the petitioner did not submit a translated copy of the article as required by 8 C.F.R. § 103.2(b)(3) and does not allege that the contents of the article constituted a contribution of major significance to the field.

The petitioner submitted letters from several individuals recommending approval of his Form I-140 petition and permanent residence in the United States. These individuals attest to the petitioner's skills, expertise and value as a drum player and music director of the Chinese Peking Opera. Many also state that the petitioner has attained international repute and has reached the pinnacle of success in his profession. Song Changrong, president of the Jinagsu Provincial Huaiying Peking Opera Theater, states:

Most notable he was a young innovator that published the cassette 'The Melody of Peking Opera – the Music of Drum.' In this cassette he created [a] new method and put new ideas of drum playing in Peking Opera performance that [was] well received by the opera-fans in China and in the world.

██████████ president of the Tong Xiao Ling Chinese Opera Ensemble also credits the petitioner with creating a new method of drum playing that was well received by opera fans. However, while both of these individuals attest to the petitioner's innovative process, neither indicate that this process constituted a contribution of major significance to Chinese Peking Opera. We note that several of the petitioner's letters of recommendation are written in Chinese, and the accompanying translations are not accompanied by the translator's qualifications and certifications. Therefore, the letters are not probative in this proceeding.

The evidence does not establish that the petitioner 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.

The petitioner submitted a copy of his cassette, *The Melody of Peking Opera – the Music of Drum*, on which he served as leading musician and drum player. The petitioner also submitted a February 18, 2005 certification from the director of distribution for Liaoning Ban Dao Video and Recording Publishing House, purportedly attesting that the cassette "is well sold in [the] Chinese market." However, as with other documentation submitted by the petitioner, the translation does

not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from Chinese into English. Regardless, the certificate does not, on its face, provide sufficient evidence of the commercial success of the cassette. While the letter indicates that a total of 51,800 cassettes were sold, the record does not indicate the monetary value of these sales or how they compare to similar products so as to determine its commercial success.

The petitioner also claims to meet this criterion through his performance at the 1999 Cultural Festival in Clausthal-Zellerfeld, which was recorded on a compact disk. However, as with the cassette, the petitioner provided no documentary evidence of the commercial success of the compact disk.

In response to the RFE, the petitioner stated that he also meets this criterion based on two video cassettes, one of which was an October 4, 2006 interview by anchors of Sino-Television Inc., and the other a recording of two operas in April 2006 in which the petitioner served as director. However, as these events occurred subsequent to the filing of the visa petition, they are not evidence of the petitioner's eligibility at the time the petition was filed and cannot be considered. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

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 his field of endeavor. A review of the record, however, does not establish that the petitioner has distinguished himself as a musician in Chinese Peking Opera performance 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 is a talented drum player and music director, 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.