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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 09 2009
LIN 06 168 51562

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.

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
John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) 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. For the reasons discussed above, the petitioner has not overcome the director’s concerns.

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.

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-9 (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.

The petitioner did not complete Part 6 regarding his proposed employment. The record, however, reveals that the petition seeks to classify the petitioner as an alien with extraordinary ability as a Chinese dulcimer, or yangqin 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 initially submitted certificates purporting to document the following awards:

1. An April 17, [REDACTED] at the China National Folk Music Competition issued by the China Ministry of Culture;
2. A July 18, [REDACTED] at the Liaoning Folk Music Presentation issued by the Liaoning Province Department of Culture and the Shenyang City Bureau of Culture;
3. An August 18, [REDACTED] at the China National Young Professional Art Competition issued by the China Ministry of Culture;
4. A May 3, 2003 [REDACTED] at the First Liaoning Yangqin Competition (Professionals) issued by the Liaoning Folk Music Association;
5. A June 18, 2005 [REDACTED] issued by the New York Feitian Traditional Art Performing Company, Inc.; and
6. A February 10, 2006 City Council Citation as an "outstanding citizen" from the City of New York.

In response to the director's request for additional evidence regarding the significance of the above awards, the petitioner submitted a letter from A [REDACTED], Executive Director of the Tung Ching Chinese Center for the Arts offering an "advisory opinion" as to the significance of the petitioner's 1990 award. [REDACTED] asserts that the 1990 award symbolizes "the highest level of worldwide achievement/contributions in the field of Chinese music." In addition, the petitioner submitted a purported translation of materials from the Chinese Embassy in Singapore's website. The original foreign language document was not submitted. The materials discuss the China Ministry of Culture.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The materials do not discuss the significance of competitions organized by or awards issued by the Ministry. The petitioner also submitted 1989 materials from the Ministry regarding the China National Folk Music Competition. The materials indicate that competitors must have received prior prizes at the provincial level and have “professional articles published in major national media, newspapers or musical publications.”

The director concluded that the record contained no objective evidence that the 1990 award was nationally or internationally recognized in the field. On appeal, the petitioner asserted that the 1989 materials from the Ministry demonstrate the significance of the award and that the competitors were professionals from all over China.

U.S. Citizenship and Immigration Services (USCIS) 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’r. 1988). However, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. USCIS 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’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)). Ms. Ho’s opinion is not supported by objective evidence of the significance of the 1990 award, such as major media coverage of the event and the awardees.

While the 1989 Ministry materials must be considered, they are not consistent with the remainder of the record. The certificate for the award was issued in 1990. As of that date, the petitioner had not yet won any provincial awards. The record also contains no evidence of professional articles published in major national media, newspapers or musical publications. Thus, the petitioner has not demonstrated how he qualified for the competition in 1990.

We note that the record, at best, reveals a decreasing status in the field. Assuming the 1990 award (when the petitioner was 26) is authentic, the petitioner won a provincial competition eight years later and then, four years after that, at age 38, won an award limited to “young” professionals. A year later, the petitioner again won only a provincial award. Upon coming to the United States, the petitioner received an award from the New York Feitian Traditional Art Performing Company, Inc. While counsel initially asserted that this was an “international” award, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence regarding the prestige of this entity or that the award is anything other than local recognition.

Further, the City Council Citation, in addition to being a purely local certificate, does not appear to be issued in the petitioner’s field of music.

Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of nationally or internationally recognized “prizes or awards” in the plural. The only national award not limited by age is the 1990 award, which, assuming it is authentic, cannot be considered evidence of sustained acclaim in 2006.

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 February 18, 2006 Letter of Appointment as a “Committee Member” of the New York Association of Chinese Orchestral Music (NYACOM). The petitioner also submitted professional and membership certificates for Liaoning provincial entities.

In response to the director’s request for additional evidence, the petitioner claimed, for the first time, to be a member of the Chinese Musicians Association and its evaluating committee. The petitioner submitted a March 2007 “Certification Letter” from the Chinese Musicians Association affirming the petitioner’s membership on the association’s evaluating committee and asserting that members must have achieved a “brown” medal or above in a national competition, have published articles in major national media and have given lectures at recognized professional institutes. As stated above, the record contains no evidence that the petitioner has authored any published articles. Moreover, the record lacks evidence that he has lectured in his field. Finally, the petitioner submitted a letter from [REDACTED] Vice president of NYACOM asserting that the association is “governed by a committee of official members who have been appointed strictly by invitation and selected according to their excellent and distinguished credentials as leaders in the field.”

The director concluded that the requirements for membership in the Chinese Musicians Association were not outstanding and, moreover, the petitioner did not appear to meet two of them. The director further concluded that NYACOM was a recent entity and that they had not provided their specific membership requirements.

On appeal, the petitioner questions why the director concluded that the petitioner did not appear to meet the last two requirements for membership in the Chinese Musicians Association and asserts that they are merely “possible eligibilities” for membership that are not necessarily those demonstrated by the petitioner. The petitioner no longer asserts that NYACOM committee membership is sufficient to meet this criterion.

The petitioner has not overcome the director’s concerns. The materials from the Chinese Musicians Association specify that members “have to fulfill at least three of the following qualifications” and only lists three. If there are other qualifications, the petitioner has not established what they are and, thus, that they are outstanding achievements. Establishing that some members may have outstanding

achievements is not sufficient. The petitioner must establish that such achievements are a requirement of membership.

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). We concur with the director that the petitioner has not submitted evidence that he is the author of a published article in qualifying media or that he has lectured in his field at recognized professional institutes. The petitioner questions this conclusion, but provides no evidence of these achievements on appeal. Thus, the director rightly questioned the credibility of a claim that the petitioner is a member of an association that requires such achievements. Regardless, we also concur with the director that authorship and lecturing are not outstanding achievements.

Finally, the petitioner has not established that nationally or internationally recognized experts judge the achievements of prospective members in the Liaoning provincial associations or NYACOM or what the specific membership requirements for these associations are.

In light of the above, 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.

The petitioner initially submitted a 2004 article in *The Queens Times* reviewing a performance of Peking Opera in New York. The article includes only a single sentence about the petitioner. The petitioner also submitted evidence confirming that this publication's circulation is limited to the local area around Queens in New York. The petitioner's response to the director's request for additional evidence did not address the director's concerns that the article was neither about the petitioner nor published in major media. Thus, the director concluded that the petitioner had not established that articles about him had appeared in major media.

The petitioner does not address this criterion on appeal and we concur with the director that the petitioner has not established that he 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.

Initially, the petitioner submitted an August 1999 Certificate of Appointment appointing the petitioner as a member of the "judge committee" of the Chinese Music Association. In response to the director's request for additional evidence, the petitioner submitted the aforementioned 2007 Certification Letter affirming the petitioner's membership on the association's evaluating committee. As stated above,

however, this document lacks credibility because it indicates the petitioner is a member of an association whose membership requirements he does not meet. Finally, the petitioner submitted a certificate appointing the petitioner as the “presiding judge” at the 2002 5th China-Japan-Korea International Traditional Music Performing Competition in charge of the Yangqin section.

The director concluded that the record did not include evidence regarding the requirements for judging these competitions or their significance and that the evidence was not consistent with sustained national or international acclaim in 2007 when the petition was filed.

On appeal, the petitioner asserts that the 2002 competition was international and accredited by the China Ministry of Culture and the Chinese Musicians Association which governs the appointment of judges. The petitioner then reiterates the membership requirements for the Chinese Musicians Association. Finally, the petitioner asserts that the evidence of judging was only an example and that the petitioner is unsure how many competitions he must have judged to meet this criterion. The petitioner, however, submits no new evidence of judging responsibilities.

The record lacks consistent evidence that the petitioner qualified as a judge for the Chinese Musicians Association and, thus, could have judged an international competition in 2002. The petitioner has not submitted an official program for the event listing him as a presiding judge.

Even if we were to conclude that the questionable evidence establishes that the petitioner meets this criterion, and we do not, the petitioner has not submitted evidence indicative of any acclaim after 2002. Thus, while we do not require a specific number of competitions judged, we concur with the director that the evidence relating to this criterion is not evidence of sustained acclaim in 2007 when the petition was filed. In fact, as stated above, even if we accepted all of the evidence as credible, the petitioner’s stature in the field appears to be decreasing.

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, some of which are from individuals who profess only an amateur interest in Chinese music. While these letters offer subjective evaluations of the petitioner’s talent, none of them identify specific contributions or explain how those contributions have had a major impact on the field. 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 initially submitted promotional posters for performances at local cultural centers and a church as well as the local newspaper article reviewing a performance. The petitioner’s response to the director’s request for additional evidence did not address this criterion and the director did not address it in his final decision. The petitioner does not claim to meet this criterion on appeal.

First, this criterion, by its language, applies primarily to the visual arts. Moreover, it is inherent to the occupation of a performing artist to perform. We cannot conclude that performing at local venues is indicative of or consistent with national or international acclaim such that we can conclude that the petitioner meets this criterion.

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

As stated above, the petitioner has submitted evidence that he served on the evaluating committee of the Chinese Musicians Association and was appointed to a committee of NYACOM. While the petitioner has not expressly asserted that he meets this criterion and the director did not address this criterion in his denial, we reiterate that the petitioner's basic membership in the Chinese Musicians Association is questionable given the fact that he has not established that he meets all of their membership requirements. Moreover, the petitioner has not established that NYACOM enjoys a nationally distinguished reputation or that the role of a committee member is leading or critical to NYACOM as a whole. Thus, the petitioner has not established 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 the petitioner submitted a compact disc, he did not submit any evidence of how this disc has sold. Thus, the petitioner has not established that he meets this criterion.

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 dulcimer player 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 may have, at one time, demonstrated some level of talent as a dulcimer player, but is not persuasive that the petitioner's achievements, especially recently, 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.