

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

B2



FILE:

[REDACTED]
SRC 09 012 50449

Office: TEXAS SERVICE CENTER

Date:

NOV 19 2009

IN RE:

Petitioner:

Beneficiary:



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:



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 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).

Perry Rhew
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on April 20, 2009, 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 that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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 October 17, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a magician. 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 under 8 C.F.R. § 204.5(h)(3).¹

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

On appeal, the petitioner claims eligibility for this criterion based on:

1. Copper Prize at the 2006 China Bao-Feng Third Magic Cultural Festival;
2. 6th Place at the 2007 Spanish International Grand Magic Competition; and
3. 3rd Place at the 2008 Spanish International Grand Magic Competition.

Regarding Item 1, the petitioner submitted a picture of the award along with an Honorable Certificate indicating that the petitioner "honorably obtained COPPER PRIZE of the Invitation Competition of 'Bao-Feng Cup' of China Bao-Feng Third Magic Cultural Festival." The petitioner also submitted documents regarding the Bao-Feng Magic Cultural Festival. However, the petitioner submitted partial English language translations and excerpts for these documents. The English translations fail to comply with 8 C.F.R. § 103.2(b)(3), which requires that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language 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."

Because the petitioner failed to comply with 8 C.F.R. § 103.2(b)(3), 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. Partial translations and excerpts prevent us from evaluating the credibility of the documentation and limit our scope in determining the significance of the 2006 China Bao-Feng Third Magic Cultural Festival and, therefore, whether the Copper Prize can be considered a nationally or internationally recognized prize or award.

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

Regarding Items 2 and 3, the petitioner submitted two invitation letters, dated July 25, 2007, and August 10, 2008, from [REDACTED] inviting the petitioner to participate at the Spanish Magic Convention. The petitioner also submitted a certificate in the Spanish language, which was not accompanied by any English language translation. In addition, the petitioner submitted two partially translated excerpts of newspaper articles regarding the petitioner's performance at the convention. The English translations and certificate again fail to comply with 8 C.F.R. § 103.2(b)(3).

Because the petitioner failed to comply with 8 C.F.R. § 103.2(b)(3), 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. Partial translations and excerpts prevent us from evaluating the credibility of the documentation and limit our scope in determining the significance of the 2007 and 2008 Spanish Magic Convention and, therefore, whether prizes awarded at this convention may be considered nationally or internationally recognized prizes or awards.

Notwithstanding, the petitioner failed to establish the significance of the 2007 and 2008 Spanish International Grand Magic Competition, so as to demonstrate that this competition is nationally or internationally recognized, as well as documenting the petitioner's placement at either of these competitions.

Accordingly, the petitioner has failed to establish 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.

On appeal, the petitioner claims eligibility for this criterion based on his membership in the China Acrobats Association (CAA) and the International Brotherhood of Magicians (IBM). In support of CAA, the petitioner submitted a copy of the Membership Booklet for the petitioner from CCA. The petitioner also submitted partial English language translations and excerpts for various documents regarding CCA. The English translations again fail to comply with 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Partial translations and excerpts prevent us from evaluating the credibility of the documentation and limit our scope in determining the significance of CCA.

Notwithstanding, it is noted that one of the excerpts submitted by the petitioner indicates that membership in CCA requires:

1. Citizenship of the People's Republic of China;
2. 16 years of age or older;
3. Attainment of outstanding achievement in acrobat works;
4. Agreement of the regulations;
5. **Application to be introduced by two existing members of CCA; and**
6. Recommendation of the group members.

The excerpt does not identify what constitutes outstanding achievement. Furthermore, the excerpt fails to establish that membership is judged by national or international experts.

Regarding IBM, the petitioner submitted a certificate indicating that he was elected to IBM in October 2006. The petitioner also submitted a letter from [REDACTED] of IBM, stating that the petitioner is a member of IBM in good standing. According to [REDACTED], “[i]n order to have been accepted into membership of the International Brotherhood of Magicians, he had to be recommended by two magic authorities or experts in the field of magic.”

Based on the submitted letter from [REDACTED] membership is based on the recommendation of two magic authorities or experts. The petitioner failed to establish that membership in IBM requires outstanding achievement in magic as judged by recognized national or international expert magicians.

In order to demonstrate that membership in an association meets this criterion, a 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. As discussed above, the petitioner has failed to establish that CAA and IBM require outstanding achievements as judged by national or international experts.

Accordingly, 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.

On appeal, the petitioner submitted various translations of excerpts from videos appearing on Hunan Satellite TV and pictures and videos appearing on Fujian TV Combined Channel and East South Satellite TV. The plain language under 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” As this criterion specifically requires the title, date, author and any necessary translation, videos and photographs do not qualify the petitioner under this criterion.

The petitioner also submitted three articles from *Strait City News*, one digital article from *Strait City News*, and one article from *Sin Tao Daily USA*. All articles are in the Chinese language and were accompanied by only partial English language translations.

Again, the English translations fail to comply with 8 C.F.R. § 103.2(b)(3). Further, 8 C.F.R. § 204.5(h)(3)(iii) requires “[s]uch evidence shall include the title, date, and author of the material,

and any necessary translation.” Notwithstanding the failure to submit full English language translations, the petitioner failed to include the date and author for any of these articles. In addition, the petitioner failed to submit any documentary evidence establishing that *Strait City News* is a professional or major trade publication or other major media. Regarding *Sin Tao Daily USA*, the petitioner submitted a document regarding the history of this publication. The majority of the information relates to the Hong Kong version rather than the USA version, in which the petitioner’s article appeared. The petitioner failed to establish that *Sin Tao Daily USA* is a professional or major trade publication or other major media.

Finally, the petitioner submitted an “Original Publication of ‘magician,’ published by chinesmagic.com of Fujian, China.” The *Magician* appears to be an autobiographical publication, which contains pictures at various events around the world. The petitioner failed to establish that *Magician* is published material about the alien in professional or major trade publications or other major media.

Accordingly, the petitioner has failed to establish that he meets this criterion.

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

On appeal, the petitioner claims eligibility for this criterion based on his ownership of Fuqing Tengfei Magic Art Troupe. The petitioner submitted the business operation license and business performance permit. The petitioner also submitted partially translated English language excerpts of newspaper articles. As previously discussed, partial translations fail to comply with 8 C.F.R. § 103.2(b)(3).

The petitioner also submitted invitation letters for the 23rd FISM World Magic Congress World Championship of Magic 2006 in Stockholm, Sweden; 28th Spanish Magic Convention in Barcelona, Spain; and IBM/SAM 2008 Combined Convention in Louisville, Kentucky. The petitioner claims that his invitations establish his leadership and critical role in Fuqing Tengfei Magic Art Troupe. The fact that the petitioner owns a business and represents his own business at various events does not establish eligibility under 8 C.F.R. § 204.5(h)(viii). The petitioner failed to establish that the petitioner’s roles or positions were leading or critical to his business as a whole. For example, the record does not include detailed position responsibilities discussing the nature of the petitioner’s duties and significant accomplishments and the importance of his role to his business. Moreover, the petitioner failed to establish that his business has a distinguished reputation. In this case, the documentation submitted by the petitioner does not establish that the business’ success or standing to a degree consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim.

Accordingly, the petitioner has not established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

On appeal, the petitioner submitted a certificate from Fuqing City Cultural Hall indicating that the petitioner “was invited to perform in our City for about 30 shows, fees so earned are ¥50,000

[\$7,322²].” The petitioner also submitted an Advertisement Image Representative Contract between the petitioner and Fuzhou Hijian Biological Technology Limited Company, which indicates that the petitioner would earn ¥600,000 (\$87,866²) for three years to “take platform photos, TV and Movie Advertisements.” The petitioner failed to submit any supporting documentation regarding this contract. The record is unclear as to the relationship between the petitioner’s occupation as a magician and the contract agreement of the petitioner taking platform photos and television and movie advertisements.

Regardless, the petitioner failed to submit any documentation establishing that he has commanded a high salary or other significantly high remuneration for services in relation to other magicians. The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field.

Accordingly, 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.

On appeal, the petitioner submitted a certificate from Fuqing City Cultural Hall indicating that the petitioner’s “box office ticket record for a single show in our City was ¥200,000 [\$29,289²].” The petitioner failed to submit any other documentary evidence.

The petitioner failed to establish that he has had commercial successes in performing as a magician. The petitioner’s only evidence of box office receipts is evidence of a single show earning around \$29,289, with no documentary evidence to establish that this amount is equal to an amount that can be considered a commercial success.

Accordingly, the petitioner has not established that he meets this criterion.

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)(i) 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.

² See <http://www.xe.com> for exchange rate; accessed on November 5, 2009, and copy incorporated into the record of proceeding.