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U.S. Department of Justice

Immigration and Naturalization Service

prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 15 2003

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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal and affirmed that decision on motion. The matter is now before the Associate Commissioner on a subsequent motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a dancer. 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.

On appeal, counsel asserted that the initial evidence was sufficient to establish the petitioner's eligibility and submitted programs for shows in which the petitioner appeared.

On December 11, 2001, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, affirmed the director's decision, concluding that the evidence did not establish the significance of his awards, the published articles submitted, the competition in which he competed, or the reputation of the organization in which he performed a leading role.

With the initial motion, the petitioner submitted evidence relating to these concerns. On July 16, 2002, the AAO affirmed its previous decision for the following reasons.

1. The evidence regarding the "Taoli" or Peach Cup competitions did not reflect that the petitioner competed against experienced experts at the top of his field.

2. The evidence regarding the reputation of the China Shanghai Song and Dance Troupe did not address the AAO's concern that successfully auditioning for a performing troupe, even a competitive group, is not an outstanding achievement such that performing with such a group constitutes membership in an association which requires outstanding achievements of its members.

3. The petitioner did not respond to the AAO's concern regarding the lack of translations, certified or otherwise, of the published materials allegedly about the petitioner as required by 8 C.F.R. 204.5(h)(3)(iii) and 8 C.F.R. 103.2(b)(3).

4. The letter of appointment to judge the "Peach Cup" was not accompanied by a certified translation as required by 8 C.F.R. 103.2(b)(3).

5. The materials submitted with the initial motion revealed that the petitioner's troupe consisted of several traveling performing groups, indicating that the petitioner, a performer, did not play a leading or critical role for the troupe as a whole above and beyond the other talented dancers and the artistic directors in the group.

With the current motion, counsel requests that the Service reconsider the evidence of record in light of the petitioner's receipt of the Special Government Allowance by the Chinese State Council in 1992. Counsel concedes that the record does not include an official statement from the Chinese State Council regarding the significance of the allowance, but refers to an article posted on a Chinese government website regarding another artist who received the allowance. The uncertified translation of the article provides that the allowance is "given by the State Council of Chinese government to honor artists who have made extraordinary contributions to the development of Chinese art and culture, honoring their contributions and expertise." As with other evidence, the petitioner did not submit a *certified* translation of this article as required by 8 C.F.R. 103.2(b)(3). Regardless, the record still does not indicate how many artists receive this allowance or how they are selected.

Moreover, this single document does not address the five issues raised by the AAO in its most recent decision. Despite being advised in both of the AAO's previous decisions that the record lacked certified translations as required by regulation, the petitioner has not submitted such translations. The statute and regulations do not allow the petitioner unlimited opportunities to supplement the record with evidence which should have been submitted at the commencement of proceedings. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). There comes a point where it is more appropriate for such new evidence to accompany a new petition, rather than supplement the record in a case where the petition was properly denied, and the appeal properly dismissed, owing to the absence of that evidence. As such, the submission of certified translations in support of a new motion will not be considered.

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 still does not establish that the petitioner has distinguished himself as an artist 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 shows talent as a dancer, 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of July 16, 2002 is affirmed. The petition is denied.