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U.S. Citizenship and Immigration Services

[redacted]

B2

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 12 2004

IN RE: Petitioner: [redacted]
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:

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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. The petitioner's motion to reopen was forwarded to the AAO as an appeal pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 she 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 an opera actress. 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, she claims, meets the following criteria. We note that the translations accompanying the foreign documents do 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 the Chinese into English.

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 copies of four certificates of awards, which according to the translations provided, were issued by the Ministry of Culture of the People's Republic of China (PRC): a 1997 Excellent Performance Award in the National Traditional Opera Joint Show, a 1998 Excellent Qing-Yi Award in the National Young Peking Opera Performer Contest, an Excellent Award of Qing-Yi Group in the National Peking Opera Competition of State Performance, and an Opera Achievement Award in the Opera Performance Grand Contest. We note that these documents are not accompanied by translations that meet the regulatory requirements and thus cannot be used to establish eligibility. We note also that while these awards appear to be granted by the PRC Ministry of Culture, thus implying that they are national awards, the petitioner fails to submit evidence to substantiate that these are nationally recognized awards for excellence. The petitioner submits no evidence that the competitions or performances were organized, sponsored or otherwise authorized by the Chinese national government, or of the historical nature of the competitions.

On appeal, the petitioner states that she contacted key persons who were on the selection committees when she won the awards. She states that they are all experts in Peking Opera Performance, and indicated that the selection process was not based on defined criteria, but was based on the expert's standards and calculations. The petitioner also stated that the competition was between 90-110 professional performers. However, the petitioner submitted no letters or statements from the judges of these competitions, and no other evidence in the record corroborates these statements. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner stated that she had prepared evidence to substantiate that the award she won is one of the highest in China and that a letter from a recognized expert is forthcoming. However, as of the date of this decision, more than five months after the appeal was filed, no additional evidence has been received by the AAO.

The petitioner also submitted a copy of a "Certificate of Culture and Art Award of Hebei Province" certifying that she won the "first grade performance award for her Peking Opera [redacted] No other evidence regarding this award was presented; however, the award appears to be provincial and not a nationally or internationally recognized award. The document also does not include a translation complying with the regulation.

A 2001 "Artistic Achievement Award" was issued to the petitioner by the Henry Street Settle/Abrons Art Center in recognition of her "excellence in the field of the performing arts and for unique contributions to the cultural diversity of the City of New York." Nothing in the record establishes that this award is a nationally or internationally recognized award for excellence in opera.

The evidence as submitted by the petitioner does not establish that she 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 submits a copy of a membership card for the Association of Chinese Artists. The translation provided with the card does not meet the requirements imposed by the regulation in that the translator is not identified, and provides no certification that the translation is complete and accurate, or that the translator is competent to translate from the Chinese into English. The petitioner asserts that the association is the primary forum for leading artists in China, and that membership requires, among other things, a first place prize of provincial or higher performance in competitions for three or more consecutive years. However, she submits no additional evidence regarding the association or its membership requirements. As noted above, her uncorroborated statements do not meet the burden of proof in these proceedings. *See Matter of Treasure Craft of California, supra.* The evidence does not establish that the petitioner 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 record includes a copy of an article that was, according to the translation provided, printed in the February 1996 edition of *Chinese Peking Opera.* As with other documents submitted by the petitioner, the translation does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), and therefore cannot be used to establish eligibility under this criterion. The translation, which does not appear to be complete, indicates the article is about the petitioner. The petitioner submits no evidence that the publication in which it appeared is professional or major trade media. Further, one article, published more than six years prior to the date she filed her petition for visa classification preference, does not establish that the petitioner has achieved sustained acclaim in her profession.

The evidence does not establish that the petitioner 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.

The petitioner submitted a letter from an associate principal of the Chinese Traditional Opera School. Mr states that he worked with the petitioner for two months on the Artist Professional Title Evaluation Committee of Nanning City of Guangxi Province. This evidence establishes that the petitioner may have enjoyed some provincial recognition, but is not indicative of her national acclaim in China.

The regulatory criteria are established to assist the petitioner in demonstrating national or international acclaim, and must be interpreted as a whole with the statute. Not all who sit as a judge on a provincial panel will have extraordinary ability or will qualify under this criterion. The AAO interprets this regulation to require that the selection and participation process for serving as the judge of the work of others in the field be indicative of national or international acclaim in the field. The evidence does not establish that the petitioner was chosen to sit as a member of the committee because of her national acclaim, or that the committee was national in scope.

A letter from the deputy director of the Bureau of Education of Nanning City, also indicates that the petitioner served as an evaluator of artists in Nanning City, although he doesn't specify when or how often the petitioner served as an evaluator. Further, as these evaluations were on a provincial level, they are not evidence of national or international acclaim.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Mr. states that the petitioner has published articles in various journals and magazines. The petitioner submitted a copy of an article that she wrote that, according to the translation provided, was published in the January 1996 edition of the *Chinese Peking Opera*. As with other documentary evidence, the translation submitted by the petitioner does not comply with the provisions of the regulation. The petitioner also submits no evidence that the article was published in a professional or major trade publication. Additionally, one article does not establish that the petitioner has achieved acclaim in her field. The evidence does not establish 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.

To meet this criterion, the petitioner must show that she performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner claims to meet this criterion based on her positions as "leading instructor" and "senior teacher" at the Nanning Arts School, alternately referred to as the Nanning Traditional Opera School. As evidence, she submits a copy of a notarial certificate attesting that she worked as a professional Peking Opera teacher at the Nanning Arts School from April 1991 to March 1997. The translation accompanying the certificate does not indicate the source of the information provided in the certificate.

Mr. who is also a former principal of the Nanning Traditional Opera School, states that the petitioner transferred to the school as a professional Peking Opera teacher in 1991, where she was subsequently promoted to assistant director of the Department of Traditional Opera and senior teacher. Although Mr. indicates the position was "extremely high" for the petitioner's age, no evidence submitted establishes that this was a leading role within the school.

Further, the petitioner submitted no evidence to establish that the Nanning School has a distinguished reputation. Although the petitioner states that the school is an "important Chinese traditional opera educational institute," she provides no other information about the school or its reputation in opera or academics. The evidence does not establish that the petitioner meets this criterion.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." [emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. However, we will briefly address other evidence the petitioner submitted under this provision.

The petitioner submitted a letter of recommendation from the stage supervisor of the Asia Chinese Opera Troupe, Inc. in Flushing, NY and from the deputy president of the Huaxia Chinese Opera Troupe, Inc. also in Flushing. Each speak of the uniqueness of the Peking Opera style and assert that the petitioner is accomplished in the art. Neither, however, establishes that she is among the very top of the field. Although she has taught Peking Opera for several years, Mr. describes her as a "promising artistic talent." This testimonial evidence does not place the petitioner at the top of the field of operatic performers.

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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as an opera actress to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner is a talented opera performer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.