



U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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

B2



File: [Redacted]

Office: Vermont Service Center

Date: **AUG 21 2001**

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 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 Service 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 the petitioner has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary petitioner as an alien with extraordinary ability as an artist. 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 which, 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.

As evidence that the petitioner meets this criterion, he submits evidence that he received the Reginald Marsh Merit Scholarship in 1995, second prize at an exhibition held at the Gallery of the Art Students League of New York, first prize in the Sal6n 5 de Julio competition organized by the Consulate General of Venezuela in New York in 1996, a fellowship at the Vermont Studio Center in 1996, and the Venezuelan CONAC grant. On appeal, counsel challenges the director's conclusion that the petitioner did not meet this criterion and notes that the CONAC Fellowship award is one of the most coveted national cultural awards in Venezuela and is only awarded to one or two leading cultural figures. The contract for the CONAC grant, however, indicates that the purpose of the award is to "further enhance and continue studies in Art at The Art Students League of New York." Academic study is not a field of endeavor, but training for a future field of endeavor. As such, scholarships and academic or training fellowships are not considered awards for excellence in a field of endeavor under this criterion.

The record does not indicate who was eligible to compete for the prizes awarded by the Art Students League or the Venezuelan Consulate in New York, but they do not appear to be national or international awards. It is not clear whether the Art Students League competition was only open to students. If so, it does not demonstrate that the petitioner is one of the very few top artists, but, at best, one of the best student artists. Furthermore, it is not clear whether the Venezuelan Consulate competition was open to all international artists or even to all artists in either Venezuela or the United States. As such, the petitioner has not established that it is a national award. Therefore, as stated by the director, the petitioner does not meet 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.

While counsel does not argue that the petitioner meets this criterion, the petitioner submitted a "gift membership" in Guild Hall in New York, East Hampton's cultural center for the visual and performing arts. The record contains no evidence that Guild Hall requires outstanding achievements of its members. Moreover, it is not clear that a "gift" membership is a general, permanent membership. In addition, while it appears that the petitioner is a member of the Art Student League of New York, the petitioner has not established that this organization is not simply a student organization and that it requires outstanding achievements of its members beyond academic achievements.

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.

On appeal, counsel asserts the director failed to adequately consider 22 articles in national Venezuelan papers. Many of those 22 "articles," however, were simply announcements for

exhibitions where the petitioner's work was displayed. The petitioner did, however, submit the following articles:

1. An interview with him in El Universal, September 1998;
2. An article regarding his move to New York in El Nuevo Pais, March 1998;
3. An article regarding the petitioner in La Brujula, a weekly cultural magazine, August 1997;
4. Two articles regarding the opening of the petitioner's exhibit at the gallery of the Government Palace in Caracas from Venevision News - On Line and 2001 Caracas in July 1997;
5. A brief article regarding the petitioner's exhibition in Argentina in Venevision News - On Line, August 1996;
6. An article regarding the winning of first prize in the Sal6n 5 de Julio contest at the Venezuelan Consulate and subsequent display of the winning painting in the Vermont Studio Center in El Nacional, September 1996; and
7. Four articles regarding the petitioner's exhibit at the R6mulo Gallegos House, Celarg in El Globo, El Siglo, Bohemia (a magazine) and 2001 Caracas in August 1995.

In response to a request for additional documentation, the petitioner submitted an additional article in El Nacional from February 1999 and more announcements of exhibitions. The record also contains three transcripts of Venevision television interviews with the petitioner. The director concluded that the articles were all from local publications. On appeal, counsel challenges this characterization, asserting El Universal, El Nacional and El Global are national Venezuelan papers. Counsel further notes that Venevision is a major Venezuelan network television station. The assertions of counsel, however, do not constitute evidence. Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Regardless, even if the articles were published in national papers, they still do not serve to fulfill this criterion. It is acknowledged that the articles submitted are specifically about the petitioner and his upcoming exhibits. Each criterion, however, must be evaluated in terms of whether the evidence establishes that the petitioner has sustained national acclaim as one of the very few at the top of his field. The articles submitted certainly reflect that the petitioner is regarded as a successful and talented artist, but do not refer to the petitioner as one of the top artists in Venezuela or even indirectly reflect such status.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

On appeal, counsel argues that the director ignored several letters attesting to the petitioner's contributions to his field. Counsel suggests the letters may have been lost and resubmits them. Contrary to counsel's assertion, the director did not conclude that the petitioner failed to submit reference letters. Rather, the director noted that the record contained little evidence from *independent* sources. We concur with the director that most of the letters are from art experts who have taught the petitioner, contracted with him for book illustrations, or displayed his work. The

record contains no evidence from independent art critics suggesting he has sustained national acclaim as one of the few artists at the top of his field.

The record contains letters from faculty at the Art Students League of New York, the Director of the Chase Manhattan Bank global Art Program, the former president of Venezuela, an advisory consultant to the Encarta Encyclopedia Dictionary, the Director of the Planeta publishing company, the President of Rómulo Gallegos, the General Director of the Caracas Department of Culture, Régulo Pérez (apparently a fellow Venezuelan artist), the first counselor at the French Embassy in Venezuela, and the adjunct director at the New School where the petitioner took some courses. While all of the letters attest to the petitioner's talent, unique style, and even his inventiveness, none of them suggest the petitioner has contributed anything to his field. The record does not reflect that the petitioner has influenced the artistic world as a whole.

Counsel argues the petitioner enjoys national acclaim in Venezuela, which is echoed by some of the letter writers. However, the former President of Venezuela, Ramón Velásquez, while providing general praise for the petitioner's work, states only that he is familiar with the petitioner due to the fact that the petitioner designed the cover and illustrations for Mr. Velásquez' book. Significantly, while a few of the petitioner's references claim he is "extraordinary," none of them suggest that he is one of the few artists at the top of his field.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The record contains evidence that the petitioner's work has been displayed at several exhibitions both in Latin America and in the United States. For example, the record demonstrates the petitioner participated in the following exhibits:

1. Guadalajara Art Expo, 1998;
2. Group Exhibition of Venezuelan Artists living in New York at the Gallery of the General Consulate of Venezuela in New York, 1998;
3. Gallery at the Government Palace Building in Caracas, 1997;
4. Gallery Artist at the International Fine Art Group in New York;
5. International Fair of Latin-American Art in Colombia, 1996;
6. Exhibition of Painting and Sculpture of the Spanish-American, in New York, 1996;
7. 20th Annual Small Works Show in New York, 1996;
8. Celarg Foundation, Center for Latin-American Studies, Rómulo Gallegos, in Caracas, 1995.

The August 1996 Venevision News – On Line article indicates some of the petitioner's paintings belong to the permanent collection of Celarg and that other works will be displayed at the Jacobo Borges Museum. A letter from the President of Celarg indicates they purchased one of the petitioner's paintings for their permanent collection. Any successful artist will participate in exhibitions for the sale of his paintings. Often, he will rent space in galleries for this purpose. Thus, the mere fact that the petitioner's work has been displayed in several galleries is not necessarily

evidence that he has national acclaim or that he is one of the very few at the top of his field. While counsel asserts that many of the galleries displaying the petitioner's work are distinguished, the record provides minimal support of that assertion. While it is certainly impressive that Celarg has purchased one of the petitioner's paintings for permanent display, the nature of that display is not known. Even if we were to accept that the petitioner meets this criterion, it is still only one criterion.

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

Counsel argues that the petitioner has performed a critical role for a publishing company by illustrating several of their books, including one by the former president of Venezuela. A letter from the Planeta publishing company suggests the petitioner's cover designs may have contributed to the sales of these books. The individual who designs some of the book covers for a publishing company does not perform a leading or critical role for that organization. While we do not discount the importance of a book's cover design, it can be presumed that people ultimately purchased the books for their content, and that the cover designs by the petitioner, while well received, were not critical to the publishing company. For example, there is no evidence that the publishing company developed a reputation for publishing books with covers designed by the petitioner. The petitioner has also not established that Planeta has a "distinguished" reputation beyond being a successful publishing company.

Counsel also argues that the petitioner played a critical role at the Art Student's League of New York as evidenced by his scholarships, awards, and the fact that he served as mentor in Bruce Dorfman's classes. It cannot be concluded that every student who is awarded a scholarship or wins an award plays a critical role for that institution. Similarly, that the petitioner served as a mentor to other students does not establish that he performed a critical role for the school itself.

Finally, counsel argues on appeal that the petitioner plays a leading or critical role for the Museum of Art in Acarigua-Araure in Venezuela. The petitioner submits a letter from the President of the Museum who writes:

By means of this letter we wish to inform you of the relationship that the Museum of Art in Acarigua-Araure has maintained with [the petitioner]. Since the very beginning, he has bonded himself to the Museum's growth process and to the development of our Exhibition Program.

This letter is extremely ambiguous and fails to explain how the petitioner has played a critical role for the Museum as claimed by counsel. There is no evidence whatsoever that the petitioner has played a significant role in the Museum's success or that the Museum developed its reputation by displaying the petitioner's work or even simply by its association with the petitioner. Nor does the record establish that the Museum has a distinguished reputation.

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 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 an artist, 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.