U.S. Department of Justice

Immigration and Naturalization Service

B2

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

[redacted] **Public Copy**

File: WAC 98 162 52098 Office: California Service Center Date: 11 DEC 2001

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)

IN BEHALF OF PETITIONER:

[redacted]

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 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a 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. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision and dismissed the appeal.

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 he 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 a painter. 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 had originally claimed to have met four of the criteria. The AAO, in its appellate decision, concluded that the petitioner had not met any of the criteria. On motion, the petitioner submits new evidence and arguments from counsel in an effort to establish that he has met the four criteria claimed.

> *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 its initial decision, the AAO stated:

> Many of the "published materials" are documents such as certificates, acknowledging the petitioner's participation in local events. Other documents are programs distributed at arts fairs. These documents are not professional or major trade publications.
>
> Of the actual newspaper and magazine articles submitted, the petitioner has not shown that any derive from major national or international publications. The petitioner cannot derive national acclaim as a result of strictly local media coverage.

The petitioner submits three new articles from California newspapers. All of these articles were published in early 2000, well after the petition's May 1998 filing date, and therefore they cannot retroactively establish that the petitioner was eligible as of that filing date. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Even if the articles had existed when the petitioner filed the petition, they do not fulfill this criterion. One article is from the Los Cerritos Community News, which by its very name appears to be a strictly local publication. The subject matter of the articles is also consistent with a local rather than national publication. Counsel does not claim that this publication constitutes major national media.

A second article appeared in the Press-Telegram, to which counsel refers as "another well known publication in California." The record contains no evidence that the Press-Telegram is nationally circulated, or that an individual could otherwise become nationally known through articles appearing therein. We note that the text of the Press-Telegram article is identical to that of the Community News article, and both pieces are obviously based on a Platt College press release (also submitted on motion).

Counsel states that the remaining article is "[a] report about the alien and his outstanding contribution to the higher education centers, published in Los Angeles Times, a major prestigious daily publication." The Los Angeles Times is certainly a well-known and prestigious publication. At the same time, we cannot ignore where this article appeared in the paper. The article appears in a section that is clearly labeled as an "advertising supplement." Every one of the articles ends with the telephone number of a local school or college. The "article" thus appears to be a paid advertisement (to promote Platt College-Cerritos) rather than a work of journalistic reportage. There is no indication that this advertising supplement was distributed nationally, rather than solely in the vicinity of the schools that the advertising supplement promotes. It is common practice for major newspapers to include sections which are distributed only in certain localities, for instance on a county-by-county basis.

The conclusion that the articles are advertisements is consistent with the fact that the Press-Telegram article about the petitioner appeared in the "Classified" section of that paper, and that the Community News article is essentially the same as the Press-Telegram article. All three pieces discuss how some of the petitioner's art work has been provided to the offices of a local assemblywoman. The Los Angeles Times advertising supplement states that the petitioner "loaned" his work, while the other two articles state that he "donated" the pieces.

Counsel states that the petitioner has documented a "staggering" quantity of publications, and condemns the Service's "never ending appetite for more and more publications" when "a reasonable prudent examiner would have been satisfied [with the] shower of publications submitted in this manner." While counsel broadly states that the petitioner's previous submissions satisfy this criterion, counsel does not address the AAO's specific findings in that regard.

Counsel does not address the plainly-worded requirement that the publications must be "major." Counsel's contention that the sheer quantity of publications is sufficient to establish eligibility is entirely unsupported. The articles submitted on motion fail to show that the petitioner's work has attracted any attention outside of southern California.

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.

In its initial decision, the AAO stated:

> Counsel states that the petitioner "has been teaching art at various colleges and universities for the past eight years." Teaching art does not demonstrate or accrue national or international acclaim. While an art teacher does evaluate the work of his or her pupils, this evaluation is inherent in the process of teaching; it does not elevate some artists or art teachers above others in the field.

Counsel states on motion that the AAO "has attempted to ignore the petitioner's prolific work, talent and magnificent artful skill by calling him merely an Art Teacher. This has been ostensibly utilized to minimize his undeniable artistic stature." Counsel then makes several assertions regarding the petitioner's talent as an artist, and the importance of recognizing such talent. These remarks, however, are entirely off point with regard to whether the petitioner has acted as a judge of the work of others. It remains that, to establish the petitioner's work as a judge, counsel had initially argued that the petitioner "has been teaching art" and in that capacity had judged the work of others.

We note that, after counsel faults the AAO for quoting counsel's own statement about teaching art, counsel cites a newly submitted certificate showing that the petitioner "is authorized to serve as a Instructor [sic] in a California private postsecondary education institution." This document does not establish acclaim or recognition in any discernible sense; it establishes only that the petitioner is authorized to teach art classes.

Counsel cites several new witness letters and other documents "[i]n support of this category," but counsel offers no explanation as to how any of this evidence establishes that the petitioner has judged the work of others at a level that establishes or demonstrates national or international acclaim. Every one of these documents concerns the petitioner's reputation in the greater Los Angeles area.

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

The AAO had previously stated:

> The petitioner has developed his own style of painting, which he terms "romantic elementism." Counsel asserts that "only a

> handful of artists in the world . . . have developed a new style and artful technique." Nevertheless, the burden is on the petitioner to show that this new technique is generally recognized as a major contribution. In and of itself, developing a new technique is an original contribution, but it does not assume major importance; its importance is up to the art world, rather than the petitioner, to decide. . . .
>
> The petitioner has not submitted evidence, such as letters from nationally recognized art experts, to show that the petitioner's paintings have had a significant impact on his field. The petitioner has submitted a number of letters from local teachers and others, but these letters do nothing to establish that the petitioner is known at all outside of Orange County, California.

On motion, counsel states that the petitioner "has devoted his life to the field of art and education" and "is also a pioneer in the presentation of 'reliefs.'" Counsel's comments do not address or overcome the AAO's finding that the petitioner has not shown that his work is widely recognized to be of major importance. Section 203(b)(1)(A)(i) of the Act demands "extensive documentation" of sustained acclaim, and counsel's personal assurances regarding the importance of the petitioner's work cannot suffice. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

To support the assertion that the petitioner's work with "reliefs" is a major contribution, the petitioner submits a personal statement in which he asserts "[i]t is my intention that this kind of art will be able to lead humanity to higher states of being and make us think about ultimate unity." The petitioner's lofty aspirations are not evidence that his innovations represent original contributions of major significance. There is no evidence that the petitioner's innovations have led to the founding of a major new movement in art by influencing other artists around the country or the world.

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

The AAO, in its dismissal notice, concluded:

> The petitioner has established his participation in local art festivals and projects, such as creating a banner for a public library and a mural outside a local franchise restaurant, but these activities are not of a caliber reserved for only the top, nationally-known artists. While an outside banner or mural is on "display" in the sense that it can be viewed by the

public, the form of the display is not an artistic exhibition or showcase. The presence of the petitioner's artwork is incidental to the purpose of the visits by the members of the public.

The petitioner's volunteer work at arts fairs and seminars does not elevate him above the vast majority of artists, as it must to establish eligibility. The petitioner has not satisfied this criterion by showing, for example, that major museums have hosted retrospectives of his work. The visa classification sought is extremely restrictive, and this office cannot conclude that the petitioner satisfies this criterion simply because his art work is visible rather than concealed.

Counsel offers no response to the above observations. The new evidence submitted under this criterion concerns the Art-A-Fair Festival held in Laguna Beach, California, in the summer of 2000. As noted above, events which took place in 2000 cannot establish eligibility for a 1998 priority date.

Also, the Service's findings regarding the petitioner's initial evidence apply equally to this new submission. Purchasing exhibition space at a local art fair is not a rare honor limited to top artists, comparable to a solo show at a nationally-known museum. Absent persuasive evidence that only top, nationally-recognized artists show their work at fairs and festivals, such evidence cannot establish the required level of sustained acclaim. Judging from the brochure in the record, Art-A-Fair 2000 was intended not to celebrate the work of the petitioner, but to provide local artists a forum to sell their work and raise their local profiles.

In conclusion, the newly-submitted evidence on motion is essentially similar to the evidence submitted previously, and which the AAO found to be insufficient to establish eligibility. Counsel has addressed few of the AAO's specific findings, and has rebutted none of them. The record establishes that the petitioner is respected locally as a successful artist and art instructor, but there is no evidence of the sustained acclaim at a national or international level which is a fundamental requirement in the statute and regulations.

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 June 29, 2000 is affirmed. The petition is denied.