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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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prevent clearly unwarranted  
invasion of personal privacy



File: [Redacted]

Office: Texas Service Center

Date: DEC 13 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:



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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, Texas 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.

On appeal, counsel states that the director "erred in choosing not to consider evidence at all." Counsel offers examples of evidence that the director purportedly chose not to consider.

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 she has sustained national or international acclaim at the very top level.

In a letter accompanying the petition, counsel states that the petitioner "is an internationally acclaimed folk artist who has made extraordinary contributions in her field, creating Chinese cloth dolls as a unique folk art form."

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, counsel 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.*

A 1981 certificate indicates that one of the petitioner's cloth dolls "has been awarded the First Prize at the China Folk Arts Overseas Tour-Exhibition sponsored by the Ministry for Cultural Affairs . . . of the People's Republic of China." The record offers no information about the significance of this award.

The city of Charlotte, North Carolina, presented the petitioner with a "Distinguished Visitor Award" in 1998. This award is clearly local in nature; there is no evidence that a Distinguished Visitor Award is nationally recognized as a top honor for folk artists. We note that the certificate makes no mention of the arts; it is a generic "form" document with a blank space to which the petitioner's name has been added by hand.

Discovery Place, Inc., presented the petitioner with a "Certificate of Special Recognition" during her 1998 visit to Charlotte. The petitioner has submitted no evidence to show that this certificate from Discovery Place is a nationally recognized award, rather than simply an acknowledgment of the petitioner's participation in the "China: Ancient Arts and Sciences" exhibit.

*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.*

The petitioner is a member of the China Folk Artists Association. The record does not specify the membership requirements for the association. We note, however, a document from the association which states that the association "conducted a master folk artists nomination and designation conference . . . to promote

international cultural exchange and mutual understanding and to reward the very extraordinary folk artists in their fields." The document continues:

The following are the criteria used in the nomination and title designation process:

1. Candidates must have at least a two-year college education and must be a member of this association;
2. At least 5 to 10 years of experience in the art field;
3. Recommendations from two professors;
4. Title designation is limited to no more than 0.5 percent of the candidates in each field;
5. Candidates must possess at least provincial level art exhibition participation or award certificates;
6. Designated artists should be promoted and awarded by their employers.

The document indicates that "[i]n comparison with almost one thousand competing candidates, [the petitioner's] are works are extremely unique and extraordinary. . . . We therefore designate her as 'Master Folk Artist.'"

The petitioner's designation as a "Master Folk Artist" is not without weight, but it does not establish membership in any particular organization requiring outstanding achievement of its members. Counsel appears to refer to the above list of criteria as the membership criteria for the China Folk Artists Association; but that cannot be the case because the first criterion includes the requirement that the candidate "must be a member of this association." The Association cannot logically require membership as a precondition for membership.

*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.*

Counsel states that the petitioner's "overwhelming accomplishments were extensively covered by major newspapers and various recognized major trade publications [in] China and the United States." The petitioner submits four "examples" but no evidence to show the total extent of the media coverage of her work.

A 1996 article in Beijing Youth Daily discusses the origins of the petitioner's cloth dolls, and states "[f]oreign friends are particularly fond of [the petitioner's] cloth dolls," citing as an example an unnamed German couple who commissioned a doll that would incorporate clippings of their own hair.

A 1999 piece in Beijing Morning Daily discusses the display in Charlotte of the petitioner's "signature work 'Mouse Getting Married,'" a work involving 51 mouse dolls in an elaborate arrangement mimicking a traditional Chinese wedding.

A 1996 article in Beijing Weekend, an English-language newspaper, discusses the petitioner and her work. The petitioner has not established whether the above three newspapers are circulated nationally, or only near the city that is the namesake of all three publications. It is not clear that an English-language publication in China could constitute major media, given that English is not the predominant spoken or written language in the People's Republic of China.

Counsel asserts that a piece in a 1992 issue of China Pictorial magazine also satisfies this criterion. This short article, however, was written by the petitioner herself, and thus it does not demonstrate outside media attention to her work (although the article did provide media exposure). In the article, the petitioner explains that her production of traditional dolls is a response to "fluffy toys modelled after images of foreign cartoons flooding the Chinese market." The two-page piece features several color photographs of the dolls, as well as one picture of the petitioner at work. The petitioner states "[i]n the last few years I have made nearly 100 cloth dolls. . . . Many veteran artists gave me instructions and praised my works. Exhibitions of my dolls have attracted adults as well as children. I have sold some of my dolls to collectors from France, the United States and Singapore." Publication information on the inside front cover indicates that China Pictorial is published in 17 different Asian and European languages, strongly implying widespread international circulation. This article appears to represent the petitioner's widest media exposure, but it does not establish that reporters in the national or international media are writing about the petitioner, because the petitioner wrote this article about herself.

Counsel states that the petitioner's "accomplishments have also been covered for many times by various TV stations including Beijing TV Station and China Central TV Station," but the record contains no first-hand evidence of such television coverage in the form either of videotapes or of attestations from network officials. One outside witness asserts that the petitioner appeared on the television program Good Morning, Beijing, the name of which implies a local rather than national audience.

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

The petitioner's dolls have appeared at the Grand Exposition of Chinese Folk Arts, sponsored by the China Folk Artists Association and the China Ten Thousand Culture Theme Park; as the "Grand

Opening Exhibit - Old Beijing Folk Art and Custom" at the Beijing Folk Art and Custom Museum; the 11th Asian Games Art Festival, Beijing Folk Art Exposition; the Beijing Arts and Crafts Exposition sponsored by the China Folk Artists Association and the Beijing International Art Palace; and the aforementioned "China: Ancient Arts and Sciences" exhibit at Discovery Place in Charlotte. The record offers little information about these exhibitions apart from their titles and when they took place.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

Making dolls is not a performing art, but we can consider evidence of the petitioner's commercial success as "comparable evidence" under 8 C.F.R. 204.5(h)(4). Counsel states that the petitioner's "representative works are well sought-after and are collected by various private citizens and organizations." While some witnesses describe, in vague terms, demand for the petitioner's dolls, the record contains no direct evidence to establish the petitioner's commercial success in relation to that of other makers of handmade dolls or comparable folk art. The petitioner cannot satisfy this criterion simply by asserting that there exists demand for her work. We note that, on appeal, counsel does not list this criterion among those that the petitioner has purportedly satisfied.

8 C.F.R. 204.5(h)(4) allows for the submission of "comparable evidence" when the above criteria are not applicable to a given occupation. The petitioner offers comparable evidence to support counsel's assertion that the petitioner "has been conferred by United Nations Educational Science and Cultural Organization and Chinese Folk Artists Association the title of Folk Industrial Artist." The record contains a certificate to that effect, from the two named organizations, stating that the petitioner has earned the title through "outstanding achievements in the preservation, creation and spread of folklore culture."

Several letters accompany the petition. Professor Mao Zhang, chairman of the Special Fine Arts Department at Tsinghua University's Institute of Fine Arts and the petitioner's sculpting instructor during the mid-1980s, states that the petitioner "is THE number one artist in China and the world in the area of hand-made cloth dolls," and that the petitioner has earned "unchallengeable status in the field." Prof. Zhang asserts that the petitioner's "art works have drawn incredible interest from foreign friends" and who "is probably the only one in her field who has attained such artistic and professional heights."

Jixin Yang, chairman of the China Folk Artists Association of the United Associations of China for Literature and Artistic Endeavors, states:

Folk art works based on cloth are of many kinds and varieties in China. . . . [The petitioner] has created something new and unique based on this traditional folk art form. She has created characters from classic Chinese literature and folk stories, which are known to every Chinese household. . . . The artistic effect of these cloth dolls is astounding!

Cunsong Li, a retired folk art researcher at the China National Museum of Fine Arts, states that the petitioner's "works of art have been selected for over ten major exhibitions," and that the petitioner "has indeed single-handedly founded this unique art form of Chinese cloth dolls."

On December 15, 2000, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the petitioner as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "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."

In response to this letter, the petitioner has submitted additional letters and documents. One letter is from Professor Ke Francis, chair of the Art Department at the University of Central Florida. Counsel describes Prof. Francis as "a world-renowned expert in the field of visual art." Prof. Francis states that the petitioner's "artwork is nationally recognized folk art of a high quality."

While Prof. Francis has won some awards and grants, there is no direct evidence that Prof. Francis is "world-renowned," nor does Prof. Francis claim to be so. The second and third paragraphs of Prof. Francis' letter are copied verbatim from the second and first paragraphs (in that order) of the previously submitted translation of an article from Beijing Morning Daily. The demonstrated fact that Prof. Francis had to rely on a newspaper article to describe the petitioner's work does not suggest that Prof. Francis has detailed first-hand knowledge of the petitioner's work or reputation.<sup>1</sup>

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<sup>1</sup>Prof. Francis' letter identifies the witness as a "native of American," yet the letter contains several grammatical errors and awkward passages that one would not normally expect from a college professor and native English speaker. For example: "She was bring some folk arts and paper cut to my university for exhibition" and, indeed, the phrase "native of American." These errors, coupled

The other letter submitted in response to the director's notice is from Kit Murison, who thanks the petitioner for "Chinese clothes," unspecified "artwork," and a "pair of rabbits." Counsel identifies Ms. Murison as "a cancer patient" who "has frequently written to [the petitioner] to express how the artwork brings new meaning of life to her." We acknowledge that many people take solace in the arts during times of adversity, but a letter from a single supporter is anecdotal and does not establish a pattern of sustained acclaim at a national or international level.

The only other submission in response to the director's notice is an article from the Boston Globe. The article describes the controversy which has arisen because major doll manufacturers, such as Mattel and Hasbro, manufacture dolls representing various ethnic communities but very few Asian dolls. This article discusses a meaningful social issue, certainly, but its bearing on the petitioner's eligibility is minimal. The record amply demonstrates that the petitioner's dolls are painstakingly handmade, and that the petitioner has only made a few hundred of the dolls. The petitioner, using her current painstaking methods, could not fill all or even a significant part of the current demand for dolls representing Asian characteristics.

The director denied the petition, stating that while the petitioner has earned some level of recognition for her work, the record does not persuasively show that the petitioner has earned sustained national or international acclaim as one of the top figures in her field. The director described many of the documents submitted with the petition.

The petitioner's appeal consists entirely of claims that the director failed to consider certain submissions. Because we have already discussed those submissions above, there is no need to further elaborate on the appeal statement.

Counsel's claim that the director failed "to consider the evidence at all" is readily refuted by review of the notice of decision, in which the director describes much of the evidence submitted. Clearly the director did not overlook this evidence, and the fact that counsel disagrees with the conclusions that the director drew from the evidence is not *prima facie* evidence of error.

Upon careful consideration of the record, we concur with the director's finding that, while the petitioner has enjoyed a measure of success in her work, the evidence does not establish that the petitioner has consistently sustained a reputation as a top

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with the extensive use of language lifted straight from a translation made specifically for the petitioner, make it highly doubtful that Prof. Francis personally wrote the letter.

artistic figure either in China or elsewhere. Attracting a small number of highly-placed admirers cannot substitute for widespread acclaim, and the petitioner has failed to establish the significance of many key pieces of evidence.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished herself as an artist 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 has earned respect with her handmade cloth dolls, but is not persuasive that the petitioner's achievements set her significantly above almost all others in the field of Chinese folk art at a national or international level. 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.