



B2

U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: [Redacted] Office: Nebraska Service Center Date: JUL - 9 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:

[Redacted]

Public Copy

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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

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 that he enjoys sustained national or international acclaim at the very top of his field.

On appeal, the petitioner offers additional evidence and testimony. Counsel argues that the director's decision "totally ignores the opinions of the most prominent art experts, museum curators, and collectors around the world."

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international

acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary 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 tribal art specialist. Counsel offers the following description of the petitioner and his work:

[The petitioner] has been recognized by some of the world's most renowned museums, auction houses, collectors, curators, dealers and others interested in the field of African and Oceanic Tribal Art. After working for years with one of the two leading international art auction houses [redacted] and Woods - including directing its internationally renowned Tribal Art Department and working in its offices in London, Amsterdam and New York, [the petitioner] has continued to sustain both national and international acclaim as an independent consultant and one of the premier experts in the world able to authenticate and appraise tribal art. . . .

[The petitioner's] work involves notifying prospective clients and potential sellers and visiting the sellers to identify, authenticate and estimate the value of the item or collection, taking into account the current market trends and prices. . . . [The petitioner] is one of the few individuals who, as a result of his many years of experience, can distinguish the authentic from the fake. [The petitioner] also researches and catalogs each item for inclusion in a sale, supervises photographing the object and if necessary prepares a marketing strategy and cost proposal.

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three or more of the necessary criteria.

The regulations contemplate the submission of a wide range of objective documentary evidence, in keeping with the statutory reference to "extensive documentation." Nevertheless, the petitioner's initial submission consists almost entirely of witness letters rather than primary documentation. The petitioner claims to have met the following criteria:

*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.*

Counsel contends that, as an appraiser, the petitioner's "work requires a great deal of expertise and knowledge of both the work of others as well as the objects themselves. [The petitioner] must also evaluate the work of others when making appraisals of the value of any particular piece." Counsel does not explain how the appraisal of a work of art involves judging the work of other art appraisers or consultants.

The letters referenced in this regard do not demonstrate that the petitioner has acted as a judge of the work of others, as opposed to a judge of the quality, worth, and authenticity of tribal art works.

The director found that the petitioner has offered no evidence that he has acted as a judge of the work of others. On appeal, counsel asserts "the very heart of [the petitioner's] career involves judging, by way of authentication and appraisal, the work of others in an 'allied field,' that of tribal art." Counsel appears to contend that the petitioner is "judging" the work of the artists themselves. The same can be said, however, of every appraiser of art or antiques; the rendering of informed opinions is an intrinsic and essential component of the petitioner's occupation, rather than a rare hallmark of extraordinary ability. Fulfilling a basic occupational responsibility is not evidence of sustained acclaim.

\_\_\_\_\_ formerly a high-ranking official at \_\_\_\_\_ offers a new claim about the petitioner's work as a judge:

[The petitioner] served for two years on the judging committee of the Olympia Antiques Fair in London which I attended. Olympia is the largest most prestigious antique fair in the United Kingdom in which leading International dealers take part. [The petitioner] was solely responsible for judging the African, Oceanic and American Indian items displayed by exhibitors.

\_\_\_\_\_ claims no involvement with the fair other than her attendance there. Thus, it is not clear what standing she has to attest to the nature or significance of the petitioner's activities there. The record contains nothing from any official of the fair to offer direct substantiation in this regard. We do not necessarily deny \_\_\_\_\_ claim; rather, the record contains insufficient evidence to confirm it.

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

The petitioner relies on several witness letters to fulfill this criterion. Witnesses assert that the petitioner successfully

orchestrated numerous successful auctions and sales of individual items for museums and other high-profile clients. The petitioner's reputation is not limited to officials of [REDACTED] indeed, a former official of [REDACTED] chief rival auction house, Sotheby's, acknowledges the petitioner's reputation and standing in the field. A variety of established experts from several countries assert that the petitioner is internationally recognized as one of the premier authorities in his field. For instance, [REDACTED] curator of African and Oceanic Art at the Seattle Art Museum asserts that the petitioner "is often cited as one of the very few authorities of his kind," and that the petitioner is one of "only a dozen people internationally who have helped to establish the standards for artistic excellence and the prices paid for such excellence in the last decade."

Counsel asserts that the petitioner's original contributions of major significance include his authorship of a standard reference work and his authentication of important works of art. In new letters, various witnesses assert that the petitioner's contribution is cumulative, giving "confidence to the market as a whole." We cannot ignore what appears to be a consensus among a broad variety of experts, who assert that the petitioner has had an especially significant impact on his field.

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

Counsel states:

[The petitioner] has authored over 50 Tribal Art auction catalogues for Christie's London, New York and Amsterdam. These catalogues include detailed descriptions and notes on hundreds of art objects and are relied on by scholars, museums, dealers and collectors as some of the most comprehensive and authoritative references on tribal art in the world. . . .

In addition, [the petitioner] authored The Letts Guide to Collecting Masks published in London in 1990 and reprinted in 1995 as The Collector's Guide to Masks. This book still stands as one of the classic reference books in the Tribal Art field.

[The petitioner] has also authored several other articles for scholarly and trade publications including several chapters . . . for the Popular Antiques Yearbook published in London in 1987 and 1988; and a chapter on "Tribal Art" published in Miller's Antique Yearbook in 1990.

The record, at the time of filing, did not contain copies of any of the above-named publications except for one auction catalogue. Witnesses confirm the publication of the petitioner's The

Collector's Guide to Masks and assert that the book is a frequently-consulted reference work within the field.

██████████ associate curator of Oceanic Art at the Metropolitan Museum of Art, states that the petitioner is "responsible for between 50 and 60 catalogues during his time at Christie's, each of which takes at least three months preparation and draws upon a very broad and detailed fund of knowledge." Professor ██████████ of the University of British Columbia affirms that the petitioner's "catalogues are received and studied by an international audience of specialists in the tribal art field."

The director, in the denial decision, appears to accept that the petitioner has satisfied this criterion. On appeal, the petitioner submits copies of pages from various editions of his book as well as various auction catalogs. The excerpts in the record show that the catalog entries are not always mere descriptions of items offered for sale. The histories of certain pieces, or types of pieces, are discussed in detail with numerous citations, showing that the catalog entries are the result of substantial research rather than simply the petitioner's impressions of the pieces themselves. Thus, the catalog entries arguably qualify as scholarly writings.

We note that a passage from the petitioner's book identifies him as "a leading authority." The book was published in 1990, nearly a decade before the filing of the petition; clearly, this description was not fabricated or "padded" for the purpose of supporting this petition.

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

We do not dispute that ██████████ enjoys a reputation as one of the world's premier art auction houses. As director of Christie's Tribal Art Department, the petitioner can be said to have fulfilled a leading or critical role. In the denial decision, the director does not appear to have disputed the petitioner's satisfaction of this criterion.

In denying the petition, the director stated "it appears that the alien meets several of the ten criteria listed at [8] C.F.R. 204.5(h) (3)" but that the petitioner has not established sustained national or international acclaim. Given that the criteria are the means by which the petitioner establishes such acclaim, it is not clear how the petitioner could satisfy the criteria without establishing acclaim. It appears that the director meant to state that the petitioner has attempted, without success, to satisfy three or more criteria.

Counsel, on appeal, claims that the petitioner satisfies another criterion which was unclaimed in the initial submission:

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

██████████ managing director of ██████████ states that the petitioner "is currently paid a rate of \$400 per day for the work he does for this auction house. This is amongst the highest paid to any of our consultants and reflects his unquestioned position as one of the very top international experts in the field of African and Oceanic Art." ██████████ concurs that the petitioner's consultancy fee "reflect[s] his position as a leading specialist at the very top of the profession." The record contains no direct evidence regarding the earnings of other art appraisers and consultants; the record offers only an assurance that the petitioner is among the highest-paid consultants at ██████████. While the record certainly does not rule out the possibility that the petitioner is among the highest-paid consultants in his field, the record simply lacks sufficient direct evidence to support that claim. At most, it shows that the petitioner is among the highest-paid consultants at one particular auction house.

Upon consideration, we find that the petitioner has satisfactorily met sufficient regulatory criteria to establish that he enjoys international acclaim as a tribal art appraiser and consultant. While the petition would have benefited from more direct evidence, the record amply shows that scholars and curators regard the petitioner as a leading authority and top expert in his field.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States, and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.