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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC 01 225 57578

Office: Vermont Service Center

Date:

AUG 29 2002

IN RE: Petitioner:
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:

Self-represented

Public Copy

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

The petitioner is an ornamental metalwork designer. 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.

The petitioner states that he "is the Honored Artist of Georgia." The petitioner asserts that "[n]umerous state and public organizations in Georgia and beyond . . . granted prestigious prizes

and awards” to him. The petitioner submits a letter from J.N. Pachuashvili, vice president of the Kutaisi chapter of the Georgian Union of Artists, indicating that the petitioner “was awarded ‘Best Georgian Artist of the Year’ five times by the Union of Artists of the Republic of Georgia and the Ministry of Culture of Georgia, in 1987, 1990, 1995, 1996, [and] 1998.” The record contains no contemporaneous documentation from 1987-1998 to reflect the petitioner’s title, nor does the record contain corroboration from a national (rather than state) level official to confirm the prizes.

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 states that, prior to the collapse of the Soviet Union, he “was a member of the Union of Designers of the USSR. Membership in this organization was only available to prominent artists.” The petitioner submits a copy of a membership card, which confirms the petitioner’s membership but does not mention the membership requirements. The only exhibit that the petitioner cites regarding the membership requirements is a letter from S.P. Samokhin, president of Sretenka Design, for whom the petitioner had performed commissioned work on two occasions. Mr. Samokhin states that the Union of Designers of the USSR “only accepted top artists and designers.” Mr. Samokhin produces no documentation from the Union itself, nor does he demonstrate that he himself was formerly an official of the Union with standing to attest to the Union’s membership requirements.

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.

Gia Zubashvili, an editor at Georgian TV and Radio Broadcasting Corporation, states that the petitioner “was [the] focus of our television and radio programs many times.” The wording of the regulation calls for the submission of published materials about the alien, rather than simply an assurance that such material exists. The letter also omits the title and date of the programs, both of which the regulation plainly requires. We cannot determine, from the one vaguely-worded letter, the extent, duration, or nature of the petitioner’s coverage, nor can we determine whether the petitioner was among the most-covered artists in his field.

The petitioner submits a photograph which, he says, depicts “a videotape of [a] documentary film” featuring his work. A commercial videocassette is not evidence of major media coverage. A separate criterion addresses video recordings:

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

The photograph of the videocassette packaging demonstrates that the cassette exists, although the photograph is of poor quality and the printing on the label is illegible. The petitioner has not submitted any evidence to establish that the videotape has sold a substantial number of copies.

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.

J.N. Pachuashvili, previously identified as the vice president of the Kutaisi chapter of the Georgian Union of Artists, states that the petitioner "has been a Jury Chairman on many exhibitions/competitions in the Republic of Georgia, particularly, the annual Spring Competition and Autumn Competition, which take place in Kutaisi." The petitioner was the president of the Kutaisi chapter, and thus Mr. Pachuashvili was the petitioner's subordinate. The record contains no first-hand evidence of the petitioner's work as a judge at specific events. Furthermore, judging local events as president of a local chapter is not national in scope, and does not establish acclaim beyond the Kutaisi area.

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

Letters list a selection of the petitioner's projects. S.P. Samokhin states that his company hired the petitioner "for the restoration of the architectural meorial, the Tchertkoff Mansion on Myasnitskaya Street" and "the construction of the new municipal cultural center in Moscow." Gia Zubashvili states that the petitioner's "contributions to the Georgian culture encompasses [sic] a unique and original stylistic work that reflects and preserves the great Georgian traditions of metalworking as well as presenting modern Georgian artistry at its finest." Givi Dumbaze, vice president of Colkhion-Silk Production Association, deems the petitioner "one of the most important Georgian artists of our time" who "worked relentlessly to bring young people into [the] arts, [and] to revive the Georgian culture and traditions." B.I. Ezrokhi, general director of Parnas Gallery, Moscow, states "Parnas Gallery is one of the largest manufacturers of designer metal objects in Russia. . . . Some of our best-selling merchandise are items designed by [the petitioner]. These include designer railings and gates." Mr. Ezrokhi asserts that the petitioner "is among the best metalwork artists in the [former Soviet Union]. His contributions to the arts are widely recognized as outstanding."

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

G.G. Lomtadze, director of the D. Kakabadze Kutaisi State Museum-Gallery of Arts, states that the petitioner participated in 23 exhibitions at the museum between 1978 and 1998, showing up to seven works at each event. At most events, the petitioner showed between one and three works. The record does not establish that the museum has a national reputation; its name emphasizes a regional rather than national character. The record does not show that the petitioner's works have had a significant showing outside of Kutaisi.

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

As noted above, the petitioner has served as the president of the Kutaisi chapter of the Georgian Artists Union. This is a local/regional title. The petitioner has not shown that the Kutaisi chapter is especially distinguished in Georgia when compared to other state chapters of the national organization.

We have previously discussed S.P. Samokhin's letter discussing the petitioner's involvement on two commissions for Sretenka Design. Mr. Samokhin asserts that "Sretenka Design is among the most prestigious firms specializing in designing and manufacturing of ornamental metal items." The record contains no objective evidence of Sretenka Design's distinguished reputation. A letter from the company president cannot suffice in this regard. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner asserts that he "is one of the founders of the faculty of Industrial and Artistic Design at the Kutaisi State Technical University." The record contains a letter from T. Gordeladze on the letterhead of N. Muskhelishvili Kutaisi State Technical University, but the letter is in Russian with no translation attached. The record contains no evidence to establish that the university enjoys a distinguished reputation at a national level in the Republic of Georgia.

The director instructed the petitioner to submit additional evidence to establish the required sustained national or international acclaim. The director specifically informed the petitioner that the evidence already submitted (primarily letters) was not sufficient to establish eligibility. In response, the petitioner has submitted two additional witness letters.

Claus Borschevski, president of Buitenck Art Consulting, Inc., states that the petitioner "is known to the specialists in his field not only as an outstanding artist, but also as an individual who has contributed tremendously to art education and preservation of extraordinary ancient techniques of ornamental metalwork design." Mr. Borschevski states that the petitioner "enjoys [the] status of a national hero in the Republic of Georgia" and "is well-known in Europe and the rest of the [former] Soviet Union." As with the previous letters, Mr. Borschevski's letter contains a number of vague assertions, as well as claims for which first-hand documentation ought to be readily available. If the petitioner is a "national hero" in Georgia, renowned throughout all of Europe with that continent's many legendary art museums, it strains credulity that such a reputation would not be heavily documented instead of having to rely on a small number of letters from witnesses whom the petitioner has selected.

Martin S. Rubinstein, art expert and consultant at the Solomon R. Guggenheim Museum, states that membership in the USSR Union of Designers "was a very high honor, available only to top honors. . . . Union members were truly the elite of the Soviet artistic society." We cannot ignore the absence of any documentation from the Union itself. Even if the Union disbanded with the end of the Soviet era, that would not have prevented the survival of Union documents such as official membership requirements. Mr. Rubinstein makes several other assertions that are contained in previously submitted letters. Repetition of a claim is not corroboration.

The director denied the petition, stating that the record does not contain "primary evidence" sufficient to support the claims made on the petitioner's behalf. On appeal, the petitioner argues that he is in the United States as an O-1 nonimmigrant, a classification which in some ways mirrors the immigrant classification he now seeks. Not having seen the evidence which supported his nonimmigrant visa petition, we cannot comment on the approval of that separate petition.

The petitioner asserts that official documentation is difficult to obtain for various reasons. Be that as it may, the petitioner chose to seek a classification that requires "extensive documentation" of

sustained acclaim, and the petitioner cannot relieve himself of that burden simply by claiming that the documentation cannot be obtained. We note that most of the witness letters are from individuals who indicate that they are in Georgia and Russia, and therefore there is clearly no fundamental impediment to getting documents from those countries to the United States.

The petitioner asserts "I have been named 'Best Artist of the Year' seven times. . . . Winning such award for seven years means that it was probably more than just pure luck or coincidence." In his initial petition, the petitioner had claimed to have won this award only five times. Thus, the petitioner implies on appeal that he has won it twice more since he filed the petition.¹ Yet even this claim has no evidentiary support at all, leaving open the question of how the petitioner knows he won the award if there has been no official notification.

The petitioner is correct in his assertion that the claims made on his behalf indicate sustained national or international acclaim. At issue is not the magnitude of the claims, but rather the evidence submitted to support those claims. The petitioner's claims rely almost entirely upon witness letters. These letters contain numerous assertions for which primary documentation should be readily available. The statute calls for "extensive documentation" of sustained acclaim, a demand mirrored in the regulatory language that calls for a variety of evidence. Letters from a handful of witnesses, including the petitioner's subordinates and employers, cannot take the place of such documentation. While the letters can offer explanatory background information and other illumination, they cannot by themselves form the backbone of a claim of extraordinary ability.

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 a metalwork 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 record contains no actual evidence that the petitioner's achievements set him significantly above almost all others in his field 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.

¹ Awards won after the petition's filing date cannot retroactively establish eligibility. 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.