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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 01 153 52462

Office: Vermont Service Center

Date: AUG 29 2002

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

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.

We note that, in filling out the section of the I-140 petition form pertaining to the classification sought, the petitioner checked five different boxes¹. Most of the classifications so marked require the petition to be filed by a U.S. employer. The director informed the petitioner that the petition would be considered under section 203(b)(1)(A) of the Act, pertaining to aliens of extraordinary ability. The petitioner did not contest this designation, and on appeal counsel argues that the petitioner does qualify for that classification.

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

¹ The five boxes checked were labeled "An alien of extraordinary ability," "A member of the professions holding an advanced degree or an alien of exceptional ability," "A skilled worker (requiring at least two years of specialized training or experience) or professional," "Any other worker (requiring less than two years training or experience)" and "Soviet Scientist."

be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner refers to himself as “one of the most expressional romantic figures in contemporary Russian avant garde tradition, creator of original painting style ‘radiaccental’ and unique transfigurative forms.” The petitioner asserts that he has enjoyed international acclaim since 1983, when he was 18 years of age. 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 does not explain which of the ten criteria he claims to have met, but the evidence submitted with the petition appears to be intended to meet the following criteria:

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.

A translation of an article in *Die Wiekslag* (the publication's subtitle translates as “Newspaper of North-Groningen” in the Netherlands) announces the opening of a 1992 exhibition of the petitioner's work. The petitioner asserts that *Die Wiekslag* is a major publication but offers no evidence such as circulation data to support this claim.

The petitioner's photograph appeared in a 1985 issue of *Moscow Night*. The caption of the photograph has been translated as “Multiskillful Education – Moscow Academy of Art Industry graduated [the petitioner].” The caption says nothing about the petitioner except to mention his art school graduation. This translation appears to be inaccurate or at least incomplete; the Russian-language original caption contains the name of M.I. Kalinin, which does not appear in the translation. There is no evidence that any actual article accompanied this photograph and its brief caption. The petitioner indicates that *Moscow Night* was “one of the most major cultural newspapers of Russia in 1970s-80s” but, again, the record contains nothing to support that statement.

The petitioner has not shown that he has been the subject of any media coverage since his arrival in the United States in 1994. The petitioner's prior media coverage amounts, in essence, to one advertisement and a caption identifying him as an art school graduate. It does not appear from this minimal evidence that the petitioner has attracted sustained major media attention.

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

The petitioner asserts that he has invented a new style of painting, but he has not shown that this style is imitated nationally or internationally or that there is major national or international demand for his work. Judith M. Burton, director of Art and Art Education at Columbia University Teachers College,

states "I was impressed with [the petitioner's] work, and found it innovative yet with strong links to the traditions of Russian painting. . . . My sense is that he . . . would bring to the arts community a very distinctive aesthetic philosophy and body of work." This endorsement of the petitioner's overall talent does not equate to a showing that the petitioner has made specific contributions of major significance in the field.

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

The petitioner submits letters from the directors of various galleries in New York City, indicating that the petitioner has shown his work there. Given that there are hundreds of art galleries and art dealers in New York City alone, such gallery displays cannot constitute *prima facie* evidence that the petitioner is a nationally or internationally acclaimed artist.

A newspaper article, mentioned above, refers to a show of the petitioner's work in the Netherlands in 1992. The petitioner submits a copy of a 1992 contract with the Sergei Popov Gallery in Berlin, Germany, indicating that the petitioner "placed the works at the gallery's disposal for sale," and that the gallery "commits to make sales exhibitions" on the petitioner's behalf in exchange for half of the net profits from sales. Consigning one's work to an art dealer for sale appears to be a routine activity in the art world, rather than a rare sign of extraordinary ability or sustained acclaim. Exhibitions of this kind cannot carry the same weight as, for instance, museum shows at major venues, in which art works are displayed merely for viewing rather than for sale.

Documentation in the record shows that three works by the petitioner were part of a 1989 exhibition held in Moscow. The petitioner asserts that the same three works were shown in Paris in 1990 "with great success" but this claim is unsubstantiated. The petitioner submits a list of solo exhibitions from 1982 onward, but this list represents a claim rather than documentation to support that claim. The list of exhibitions cannot be considered evidence of the display of the alien's work.

While the petitioner's work has appeared at various galleries and shows, the petitioner has not established that these displays rise to the level of extraordinary ability or sustained acclaim. Any artist who seeks to sell his or her work would be expected to make that work visible for viewing beforehand, because few patrons would purchase a painting sight unseen. The petitioner has not shown that his works have appeared in major museums, either as permanent exhibits or as temporary or traveling exhibitions. The petitioner has not shown that the galleries that sell his work are nationally or internationally renowned as the top galleries, accepting works only from recognized major talents.

Some evidence submitted with the petition does not readily fall under the above criteria. The petitioner submits a letter from Garo Dedeian, president of Shine Jewelry Manufacturing, stating that the company "intends to employ [the petitioner] as a Designer of original wax models to be used in the manufacturing of 14kt gold jewelry."

The record contains a resume indicating that the petitioner is an actor as well as a visual artist, but the only evidence relating to his acting career is a copy of a check showing that Paramount

Pictures Corporation paid the petitioner \$75.00 for one day of work as a non-union extra in the film "Changing Lanes."

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner submits additional materials. The petitioner asserts that he has submitted letters to the curators of major U.S. museums but has received no replies.

Carole Jones, director of Atelier International Art Group, states that the petitioner "has been with the Atelier International for one year and will continue to bring original work to the gallery. He is a tremendous asset to the gallery." This letter adds nothing of substance to the record, as the initial submission amply demonstrated that the petitioner sells his work through New York galleries. The remaining materials submitted in response to the director's notice amount, in essence, to promotional materials.

The director denied the appeal, stating that while the petitioner "has enjoyed some success" as an artist, he has not shown that "he is generally regarded as being among the small percentage at the very top of his field." On appeal, counsel asserts that the petitioner has satisfied five of the ten criteria set forth at 8 C.F.R. 204.5(h)(3). In addition to the three criteria already addressed, counsel states that the petitioner satisfies the following criteria:

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

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

Counsel offers no explanation as to how the petitioner has satisfied these criteria. For instance, counsel does not identify the distinguished organization or establishment for which the petitioner has supposedly played a leading or critical role, and the record does not contain any published scholarly articles by the petitioner.

Counsel maintains that the petitioner's prior submissions constitute "conclusive proof that the alien has satisfied the five ground enumerated above." Counsel does not elaborate, stating that further explanation will follow in a subsequent brief to be submitted within 30 days. To date, over five months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands. We have discussed, above, the inadequacies of the material in the record.

Counsel states "in their decision letter the Service indicates that an income of \$50,000 to \$60,000 yearly contributed to a denial of this case," and that case law requires that "such salary indications must be taken in light of the average salaries in that field of work." Counsel asserts that the director failed to consider "the income that others in this field would be earning." The petitioner, however, has not provided any data that would allow this Service to compare the petitioner's

earnings² with the average in the field, or that the petitioner's remuneration is at the very top of that range. The petitioner has not supplied any documentation at all pertaining to his earnings as an artist. The one paycheck shown in the record is for acting work. Furthermore, the director did not state that the petitioner's salary contributed directly to the denial of the petition. Rather, the director stated that the petitioner's "claimed income of \$50,000 to \$60,000 yearly also contributed to our preliminary assessment" that led to the issuance of a request for further evidence. Even then, counsel has not listed the criterion relating to high remuneration among the five criteria that the petitioner purports to have satisfied.

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 is not persuasive 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.

² As an artist, it does not appear that the petitioner receives a regular "salary" as such.