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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

[Redacted]

File:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

DEC 10 2002

IN RE: Petitioner:
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. Wieman, 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 sustained international acclaim, and thus did not qualify for classification as an alien of extraordinary ability.

The bulk of the director's decision consists of standard language taken from the statute and regulations. The one paragraph that contains any specific discussion of the petitioner and his work reads, in full:

Although the beneficiary has enjoyed measured success as an artist and painter who recently exhibited at the New York Jacob Javits Convention Center, the record falls short of establishing that he is one of the most renown artists and painters in the world. The record lacks credible documentation from internationally renown authorities establishing that he is one of the most accomplished artists in the world.

Counsel, on appeal, asserts that the director relied on an incorrect or incomplete reading of the statute and regulations. We concur with this finding. The statute, at section 203(b)(1)(A)(i) of the Act, calls for "sustained national or international acclaim," a requirement echoed in the regulations at 8 C.F.R. 204.5(h)(3). By stating only that the petitioner is not among the most famous artists in the world, the director considered only international acclaim. An alien can qualify based on national acclaim as well as international acclaim. The director, therefore, failed to give full consideration to the evidence under the national acclaim standard.

We note that the director should make the initial determination with regard to national acclaim, and therefore we take no position at this time as to whether the petitioner has established national acclaim. We note also that, at the time of filing, the petitioner had been in the United States for over four years. Evidence of acclaim in the petitioner's native country that only covers the period up to the petitioner's departure from that country cannot, by itself, demonstrate that such acclaim has been sustained. The petitioner must show consistent acclaim at a national level up through the date of filing, in order to be eligible as of the filing date.

If the director is satisfied that the petitioner enjoyed national acclaim as of the filing date, the director may request additional evidence to show that the petitioner has continued to enjoy such acclaim past the filing date and up to the present time. Such evidence would show not only that the petitioner was eligible at the time he filed the petition, but that he remains eligible at present.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position



within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.