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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 00 138 50001 Office: Vermont Service Center Date: 14 FEB 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:



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

The petitioner seeks classification as an alien with extraordinary ability as a painter. 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, she 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 she has "won many national and international prizes" that are "very competitive and limited in amount." The petitioner received what she deems "one of the highest national prize[s]" in China, the Golden Phoenix Prize, awarded by the National Ministry of Culture and the Chinese Association of Artists. The petitioner states that she was one of six painters to win the award out of "[a]bout a hundred" entrants. The petitioner does not submit any independent evidence to establish that the Golden Phoenix Prize is one of China's top art prizes. Vague witness statements to the effect that the petitioner has won many prizes do not support the petitioner's specific claims regarding the Golden Phoenix Prize.

The petitioner won second prize in the RuiHui Appreciation Art Contest, sponsored by Japanese RuiHui Fine Arts Association and the Museum of Tokyo. The petitioner states that "[o]ver 50 world artists participated," and that she "was among the 10 winners of the top prize - the 2nd prize." As the term "second prize" is generally understood, it is by definition not the top prize. Without authoritative explanatory documentation, we cannot accept the petitioner's claim that the second prize was "the top prize" in this contest. Also, if nearly one out of five entrants won that prize, it is not clear that it constitutes a significant international award.

The evidence of record fails to establish objectively the importance of many of the awards that the petitioner has won as an artist, and to support the specific claims that the petitioner has made regarding those awards.

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 expands this criterion to include "memberships and other appointed positions." These positions, however, do not represent memberships in associations, although some are applicable under other criteria and we will duly consider them below.

The petitioner claims membership in the Chinese Artists Association and the Chinese Calligraphy and Painting Artists Association, USA, but the record contains no documentation to show that either of these associations requires outstanding achievements of its members.

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.

The petitioner claims several such articles in Chinese newspapers and Chinese-language newspapers published in North America. The petitioner submits translations but not the published materials themselves. Although the petitioner had been in the United States for nearly three years at the time she filed the petition, there is no indication that the petitioner has earned any media attention in the United States outside of the Chinese-language press. This limited coverage, which excludes the non-Chinese-speaking majority of U.S. residents, does not suggest that the petitioner has sustained whatever acclaim she may have earned in her native China.

Certificates in the record indicate that the petitioner's name appears in The Famous Figures of the Contemporary Arts Circles in China and The Who's Who of the Cross-Century Chinese and Foreign Calligraphers. The record does not establish the significance of these publications or the extent to which they address the petitioner and her work.

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.

The China Artists Association appointed the petitioner to be the deputy director of the Evaluation Committee for the China Arts Exhibition. A leadership position on an evaluation committee would, presumably, involve judging the work of others. This position appears to have been national in nature, given that the association announced this appointment in a communication sent "to all the branches of each Provincial, City, Autonomous Region and Municipal Artists Association." The petitioner also served on the Judges Committee for the South-of-the-Yangtze-River Industrial Arts Show. Thus, the petitioner has acted as a judge. We note the absence of evidence that the petitioner has acted in a similar capacity since relocating to the United States.

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

The petitioner has written two books and an article, but she has not established that any of these publications represent major media or scholarly articles. The very act of publication does not inherently satisfy this criterion or establish sustained acclaim.

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

A solo exhibition of the petitioner's work took place at the Prime Art Center Gallery, Beijing, and the record documents various group exhibitions. The record does not, however, establish that the petitioner's work has been exhibited for the primary purpose of display (as with a major museum exhibition) rather than to facilitate the sale of the paintings. The petitioner has also not established that her work has appeared at the top galleries, in shows that received national rather than local attention from the art community. Some witnesses have asserted that museums have purchased the petitioner's work but there is no direct evidence of this, nor are the museums even identified.

In the United States, the Shaolin Temple Overseas Headquarters held an "Invitational Exhibition," elsewhere labeled an "Exhibition & Charity Sale," of the "Works of Internationally Famous Chinese Calligraphers and Painters" at a hotel in Flushing, New York in 1999. The petitioner was also the subject of a solo exhibition at the Oriental Gallery in New York.

The petitioner participated in a charity exhibition and sale to benefit earthquake victims in Taiwan. Three of the petitioner's paintings sold for 2,000 Taiwanese dollars each; a fourth went for 2,500 Taiwanese dollars. The event apparently took place in Flushing, New York, rather than in China, but all of the documentation in the record pertaining to the event is in Chinese. There is no indication that the event was widely publicized outside of the local Chinese immigrant community. Indeed, there is no evidence that any of the petitioner's shows in the United States have attracted significant attention outside of Chinese enclaves.

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

The petitioner submits documentation showing that the Academy of Traditional Chinese Painting paid 13,800 yuan for one of the petitioner's paintings. An exhibition catalog from a U.S. gallery lists prices for the petitioner's work generally between \$800 and \$1,200. The petitioner has not shown that her work commands higher prices than comparable works by most other U.S. artists.

The director informed the petitioner that the evidence submitted with the petition was not sufficient to show that the petitioner

ranks as a top artist with sustained acclaim. The director instructed the petitioner to submit additional evidence. In response, the petitioner has submitted letters from various witnesses. Two of the letters amounted to job offers with design or art companies in New York. The presidents of two Chinese-American art associations, one in New York, one in California, attest that the petitioner is "one of the best artists in her field" and that the petitioner "is famous for her figure-painting works." The witnesses do not indicate that the petitioner has earned any significant recognition in the United States outside of the Chinese community.

The remaining letter, from a publisher in China, states that the petitioner is one of "16 world-famous artists" whose work appeared in a book entitled Most Outstanding Chinese Paintings. The assertion of this publisher that the petitioner is "world-famous" is not, in itself, direct evidence of a major international reputation. The evidence of record restricts the petitioner's acclaim to China and the Chinese community in parts of the United States, primarily in New York.

The director denied the petition, stating that the record does not establish the sustained acclaim necessary to qualify for this highly restrictive visa classification. On appeal, counsel lists the petitioner's awards without establishing the relative national or international importance of those awards. Similarly, counsel states that the director "claimed that there are no articles about the petitioner in major art magazines or periodicals while the petitioner had already submitted more than six such articles." The petitioner had submitted articles but had not shown that the articles are from major publications, as opposed to minor or local publications. Counsel also asserts that letters from art galleries are "letters from major galleries," when the burden lies on the petitioner to establish that the galleries are, in fact, major galleries.

Counsel states "[t]he petitioner's outstanding achievement has been widely praised and recognized by other famous artists, critics and collectors." The most heavily emphasized witness is Professor Chi Chian Wang, who states on appeal:

As a world famous artist myself, I am in a position to judge [the petitioner's] work professionally. I consider [the petitioner] as one of the best artists in her field not only because she has won numerous national and international awards but also because her paintings have been widely collected by individuals and museums.

Prof. Wang does not identify the individuals and museums, and his vague statement thus carries diminished weight. To establish his own reputation, Prof. Wang submits biographical information that

establishes United Nations-sponsored art shows, one-man shows at museums such as the Brooklyn Museum, the Taipei Fine Arts Museum, the Los Angeles County Museum of Art, and other venues, and international traveling exhibitions. Bibliographic citations of publications about his work fill an entire page. We do not contest here that Prof. Wang is a highly accomplished and acclaimed artist, but his own achievements appear to eclipse the petitioner's own accomplishments. The petitioner has not shown that the art world places her on a level comparable to the level that Prof. Wang has reached.

Most of the witnesses named by counsel are Chinese expatriates in the United States, usually affiliated with Chinese-American art organizations. The U.S. art community is not exclusively or predominantly Chinese, and these letters do not show that the petitioner is nationally acclaimed throughout the entire U.S. art community (as, for instance, Prof. Wang appears to be, judging from his art credits which include but are by no means limited to Asian art establishments).

The evidence pertaining to the petitioner's reputation in China is stronger overall than that regarding her acclaim in the United States. The statute demands "extensive documentation" of "sustained national or international acclaim," but the petitioner's evidence does not establish a consistent pattern to show that the petitioner, in her years in the United States, has sustained whatever acclaim she may have earned in China. Whatever the reaction of the Chinese expatriate community to her work, we cannot ignore the conspicuous lack of evidence to show that artists, curators, collectors, and other art experts outside of that community consider the petitioner to be one of the best, or best-known, artists in the United States. Because the statute and regulations demand national acclaim, the standard for the petitioner's present level of acclaim must be the United States rather than a specific ethnic community within the United States.

We stress that this observation is not in any way intended to denigrate the Chinese-American art community or to disparage the opinions of its experts. Rather, we simply cannot ignore the complete lack of evidence to establish any recognition beyond that community. By way of analogy, if an American artist moved to China and claimed to be among China's most celebrated artists, but none of the evidence showed that the artist had earned any sort of recognition beyond the American expatriate community in China, that artist would not have presented a credible claim. Because the petitioner had worked for several years in the United States prior to the filing date, it is entirely appropriate to judge the petitioner's reputation against those of other painters in the United States, whether or not those other painters are of Chinese ancestry, in much the same way as Pablo Picasso's reputation in France was not limited to Spanish immigrants there. The petitioner

has not shown that, after years of painting in the United States, she is widely viewed as a top U.S. artist.

The documentation submitted in support of a claim of extraordinary ability must 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 have placed herself consistently within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a painter, and achieved some impressive accomplishments in her native China, but it is not persuasive that the petitioner's achievements have set her, and continue to set her significantly above almost all others in her 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.