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: Nebraska Service Center Date: 0 7 JAN 2002

IN RE: Petitioner: [redacted]
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)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

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, 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 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an artist. 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 won one of seven honorable mentions at the 1985 Cultural Center of Belchatow judges of the fine arts competition. The newspaper article regarding this competition indicates that it is a regional competition. As such, it is not a national award and cannot demonstrate national acclaim.

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.

On appeal, the petitioner claims to meet this criterion through his membership in the Illinois Trade Association. The petitioner provides no evidence of the membership requirements for the Association. Thus, the petitioner has not established that the Association 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 submitted a newspaper article regarding the 1985 Cultural Center of Belchatow competition. The article, however, is primarily about the competition and only mentions the petitioner insofar as it reports his standing in the judges' ranking. The record also includes several advertisements for the petitioner's exhibitions in The Monitor, a U.S. Polish language monthly information bulletin. Exhibition announcements in minor publications do not constitute published material about the petitioner himself in major media. The petitioner also submitted an interview with the petitioner in an unidentified foreign language newspaper. The petitioner submitted no evidence regarding the circulation of this paper which he failed to even identify as required by the regulation. Thus, the petitioner has not established that the interview appeared in major media.

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

In response to the director's request for additional documentation, the petitioner stated:

> My unique style has gained much notariety [sic] and my work is in high demand. I am broadening the horizons of art formerly looked and judged at in [sic] a more conventional manner.

On appeal, the petitioner argues that he met this criterion "in the form of my original style and major contribution in the art field." The petitioner continues:

> This was in the form of significant recognition by Mr. Radoslova of Long Island, New York. Others have recognized my unique style, such as Dr. Tim Faulkner of Norway, Mr. Frederike Orendi of Germany and the Polish Museum in America.

The record contains no evidence relating to a "Mr. Radoslova." The evidence which the petitioner may be referencing is an unsigned note which states:

> This picture is prepared to be send [sic] to New York with another one which is not ready yet. Mr. Radoslav J. Szklarchyk is [the petitioner's] representative at New York.

Attached to the note is Mr. Szklarchyk's business card which identifies him as a Marketing Executive for Ectaco. There is no evidence that Mr. Szklarchyk is a respected art critic or that he has "recognized" the petitioner's work as influential. The petitioner did not submit any letters from Mr. Faulkner or Mr. Orendi or evidence of their expertise in the field. The petitioner also failed to submit any references from officials at the Polish Museum in America. In sum, the record contains no evidence, such as letters from well-known artists, experts, instructors or critics, supporting the petitioner's claim to have influenced the field of art.

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

The petitioner had his first individual exhibition in Belchatow in 1991. In March 1991, the petitioner provided set decoration for the Losemund Theater's performance of *King Henry IV*. The petitioner also had exhibitions at the Wang Gallery in Laerdal, Norway in January 1991 and June 1991. In his interview which appeared in the unidentified publication, the petitioner claimed to have been invited to exhibitions in Denmark, Holland and Spain based on his exhibitions in Norway. The record does not reveal that he actually exhibited his work in those countries. The petitioner's work was also part of an art exhibit at the 72 Annual Art Exhibit at the Woman's Club of Evanston in October 1993. The record also contains a 1993 contract whereby the petitioner agreed to rent wall space from Artful Angles Collective Gallery. Finally, the petitioner exhibited his work at galleries and a bookstore in Chicago.

The evidence submitted for each criterion must be evaluated as to whether it demonstrates national or international acclaim. Any successful artist will participate in exhibitions for the sale of his paintings. Often, he will rent space in galleries for this purpose, as the petitioner did at the Artful Angels Collective Gallery. Thus, the mere fact that the petitioner's work has been displayed in several galleries reflects that he is able to make a living in his field, and is not necessarily evidence that he has national acclaim or that he is one of the very few at the top of his field. The petitioner must demonstrate the significance of the exhibits where his work appeared. The record contains no evidence that the petitioner's work has become part of any distinguished collection or exhibition which would reflect national or international recognition.

On appeal, the petitioner submits copies of paintings allegedly commissioned by the Camelot Hotel and Suites in Wisconsin. The petitioner submitted no documentation regarding the specifics of this

commission. Regardless, it appears to have taken place after the petition was filed and is not relevant to the petitioner's eligibility at the time of filing.

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

The petitioner claims to have performed a leading or critical role in various art exhibitions "as I was often the only exhibitor invited to display my art." As stated in the regulation, a petitioner must demonstrate a leading or critical role for an organization *with a distinguished reputation.* The record contains no evidence regarding the reputation of the galleries where the petitioner's work was the sole display. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 several receipts for paintings he has sold. Some of the paintings have sold for several thousand dollars. The petitioner has not provided any evidence of the prices for other top artists' paintings. Without such a comparison, the petitioner has not established that he receives high remuneration in relation to others at the top of the art field.

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

The petitioner appears to rely on the sale of his painting and a compact disc of his artwork for this criterion as well. This criterion, however, is applicable only to performing artists. While the petitioner is also a musician, his petition is based on a claim that he is an extraordinary visual artist.

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 indicates that the petitioner shows talent as a artist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.