

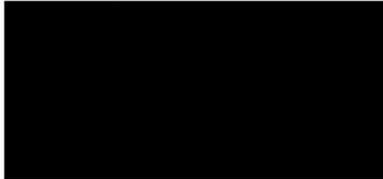


B2

U.S. Department of Justice
Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: WAC 00 070 53546 Office: California Service Center Date: 25 JAN 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

In this decision, the term "prior counsel" shall refer to Fanci Kong of Confucian Immigration Office, who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record.

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 in the art of animation. The petitioner has submitted job

offer letters from two prospective employers, each seeking to employ the petitioner as a professor of fine arts. Jianmin Zhao, director of the U.S. Arts Education Center, cites the petitioner's "great achievement and her high reputation in artist field" (sic). [REDACTED] president of Covina Valley Chinese School, states that the petitioner is a "famous artist" who "is recognized worldwide." Evidently, neither school is interested in participating actively in the petitioning process, because the officials state that they will employ the petitioner once she becomes a permanent resident (rather than file their own petitions to aid the petitioner in attaining permanent resident status).

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's initial submission does not specifically address the criteria set out at 8 C.F.R. 204.5(h)(3). Instead, prior counsel has stated:

Recent new INS guidelines have stipulated that a number of other factors need to be taken into account such as the individual should seek to work in an area of substantial intrinsic merit; the benefit of the alien's proposed activity will be national in scope; the alien will serve the United States interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

The above guidelines pertain to a separate, lower priority visa classification, and have no effect on the far more restrictive criteria for extraordinary ability. Despite this evident confusion as to the applicable standards, prior counsel repeatedly asserts that the petitioner seeks classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Act, and it is in that context that we will examine the instant petition.

Of the criteria that are appropriate to the classification sought here, the evidence submitted by the petitioner appears to conform most closely to the criteria below.

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 the "Encouragement Award" for submitting "5 Pieces of Children's Garment" to the "1st Fashion Festival in Yunnan Province." The design of children's garments appears to be an entirely different field of the arts than cartoon animation, which has clearly been the petitioner's principal occupation.

Also, a provincial prize would not, on its face, appear to be either national nor international.

Witnesses state that one of the petitioner's animated cartoons won the Best Program award at the International Festival of Television Animation, held in Italy in 1999. Festival documentation indicates that the express purpose of the festival was "to help buyers, distributors and programmers to choose high quality innovative products" for their television markets. The documentation from the festival itself does not state whether or not the petitioner's program actually won any award.

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 is a member of the Shenzhen Artist Association, the Kunming Artist Association, and the China Association of Cartoon Artists. The petitioner has not submitted documentation to establish that these associations require outstanding achievements of their members, as judged by recognized national or international experts. Two of the associations named appear (from their names) to be local rather than national.

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 book commemorating the centennial of Shanghai Number 5 Middle School includes a section honoring former students with notable accomplishments. The petitioner's photograph appears in this section. The record contains no evidence that this book was nationally distributed, rather than simply circulated among former students of the school in the manner of, for instance, an alumni directory or a yearbook.

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

The petitioner submits several witness letters. Professor Mu Qiao of the Shanghai University College of Fine Arts and director of the Shanghai Association of Artists, states that the petitioner "produced numerous outstanding animation film and TV programs" and has become "the outstanding female artist in the animation field."

Song Lin Zhang, vice chairman of the Chinese Association of Cartoon Artists, states:

[The petitioner's] numerous animation works express deep moral lessons in extensive fields. The themes concern women, children and adults. Her works show the creative style of new-generation artists. . . .

[The petitioner's] works are highly recognized by the Chinese animation and art industries, and her works are warmly welcomed by the animation industries of America, Japan, Britain, France, Spain and Germany.

Other professors and officials, including several of the petitioner's former instructors, offer comparable praise for the petitioner and her work with animated cartoons.

The petitioner submits documentation pertaining to animated cartoons she has directed, as well as books for which she provided illustrations. The record indicates that the petitioner has worked with a number of famed animation studios, including Disney and Warner Brothers, but there is no objective documentation in the record to establish that the petitioner's cartoons are widely viewed as being especially important contributions to the art of animation.

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

The petitioner lists seven art exhibitions where her work was shown between 1979 and 1984. These exhibitions appear to be provincial rather than local; the sponsoring entities included the Yunnan Provincial Culture Bureau, the Yunnan branch of the Chinese Artist Association, and the Kunming Art Association (Kunming is the capital of Yunnan Province).

A film with which the petitioner was involved was presented at the 14th Grenoble International Film Festival of Nature and Environment. Festival documents attribute the film to [REDACTED] the letter informing the filmmakers of the film's selection is addressed to [REDACTED] and [REDACTED]. This evidence suggests that the festival's organizers did not consider the petitioner to be a principal creator of the film.

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

The petitioner has served as a supervising animator for Jade Animation (Shenzhen) Co., a company about which the record provides little information. Simply creating television programs does not bestow distinction upon a production company.

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

The U.S. Arts Education Center has offered the petitioner an annual salary of \$20,000. The petitioner has submitted nothing to show that this salary would rank her among the nation's highest-paid artists, animators, animation directors or art professors.

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

The petitioner submits evidence to show that her cartoons have appeared on television and have been sold in various video formats, but the record does not document the commercial success of these cartoons.

On June 30, 2000, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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." The director asked that the petitioner compile a list of the top individuals in the petitioner's field, with a detailed explanation as to what factors went into compiling the list.

In response to this letter, regarding the list requested by the director, the petitioner submits a list of ten names, including her own. Each name is paired with one or more animation ventures, but there is no explanation as to how these individuals were selected as the top animation directors in the field.

Song Lin Zhang (also on the petitioner's list of the world's top ten animated program directors) states that the petitioner "was invited to be the judge (animation) of China TV's 'Golden Child' Award competition in 1996," and identifies the award as a national award for excellence in children's animation. This information suggests that the petitioner could satisfy a previously unmentioned regulatory criterion:

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.

At the same time, we note the petitioner's failure to mention this activity in her initial petition, despite the fact that it occurred several years before the petition was filed. We also note the absence of documentary evidence to corroborate the single letter submitted with regard to this claim.

To demonstrate her intent to continue working in the field, the petitioner submits copies of previously-submitted job offer letters, as well as membership documents from the International

Animated Film Society, and other documentation that the petitioner remains active in animation. We note that while the petitioner has documented two job offers to serve as a professor at what appear to be small art schools, there is no evidence of any demand in the U.S. for her services as an animation director, which is the occupation in which she claims to have achieved sustained acclaim.

We also note that the petitioner appears to have joined the International Animated Film Society in July 2000, after the petition's filing and indeed after the director requested further evidence. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and 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.

The petitioner submits a list of her pictures that have appeared in various publications, and prior counsel contends that these pictures amount to published materials about the petitioner and her work. The pictures, however, were not used as examples of the petitioner's work in conjunction with written articles about the petitioner. Rather, the petitioner provided illustrations to articles and stories that were not about her. By prior counsel's standard, all writers and artists employed in the publishing industry satisfy this criterion because their work appears in print.

Prior counsel cites the petitioner's membership in various artists associations, and asserts that these memberships establish that the petitioner has performed in a leading or critical role for distinguished establishments. Membership, in itself, does not represent a leading or critical role; the membership documents do not distinguish the petitioner from the other members of those associations, and we cannot accept that every member of a given organization fulfills a leading or critical role for that organization.

Prior counsel quotes the retail prices of home video releases of some of the petitioner's cartoons, and states that these prices establish the petitioner's commercial success. The prices of the videos, however, tell us nothing about how many units have actually been sold, or how widely they circulate. We cannot even compare the prices of the petitioner's videos to those of other cartoons, let alone conclude that the petitioner's cartoons are among the highest-selling in China or elsewhere. The evidence submitted establishes only that the petitioner's cartoons are available for purchase.

The director denied the petition, stating that the evidence establishes that the petitioner has had a successful career as an

animator but not that the petitioner is among the most highly acclaimed animators or animation directors in the field.

On appeal, counsel repeats the previous assertion that the petitioner's work was shown at a film festival in Italy in 1999, thus demonstrating that the petitioner and the other participants "are considered by the international community to be amongst the very best in the field." We have already noted that the materials from this film festival do not appear to identify the petitioner by name, and therefore the claim that inclusion in the festival is an honor specifically directed at the petitioner lacks weight.

Counsel states "[t]he Service raises the issue of income as partially determinative in this type of case. Financial or materialistic reward, like art, is 'in the eye of the beholder.'" The Service raised the issue in the sense that two of the regulatory criteria pertain to the alien's remuneration and commercial success, but it was the petitioner (through prior counsel) who first claimed to have satisfied one of those criteria. As discussed above, prior counsel had attempted to establish commercial success through evidence that established only that the petitioner's cartoons are available for purchase.

Counsel contends that the petitioner's "position with Jade Animation and her National reputation as an artist allow her to live on a scale and in a manner that is far above that of the average artist in China today." Counsel claims that, if the petitioner "were not of special or noteworthy status she would never have been granted a visa to visit the U.S. in the first place" or been able to afford the application fee. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). We cannot conclude that the very filing of the visa petition, or the petitioner's presence in the United States, are themselves evidence of extraordinary ability.

A substantial quantity of documents accompany the appeal, but these documents appear to be still more copies of documents already repeatedly submitted prior to the appeal.

Given the repeated assertions regarding the petitioner's evident intention to work as an art professor in the United States, it is relevant to observe that the petitioner's abilities as an artist in her own right say nothing about her abilities as a professor, a position which she does not appear ever to have held prior to filing the petition.

The regulation at 8 C.F.R. 204.5(h)(5) requires that an alien seeking this highly restrictive classification must seek to continue work in the area of claimed extraordinary ability. This requirement echoes the statute at section 203(b)(1)(A)(ii). In this instance, the petitioner has not clearly shown that working as

a professor, whose duties include classroom instruction and some administrative duties, would represent a natural progression from her former work as a visual artist and animator.

The documentation submitted in support of a claim of extraordinary ability must clearly 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 animator or animation director to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The record contains no evidence at all to show that the petitioner has ever worked as a professor, let alone achieved acclaim as one. The evidence indicates that the petitioner has enjoyed success as an animator, but is not persuasive that the petitioner's achievements 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.