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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 00 285 50840 Office: Vermont Service Center

Date: JUL 11 2002

IN RE: Petitioner:
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)

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

This petition, filed on September 25, 2000, 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 that, counsel 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.

Counsel states that the petitioner has received the following:

1. Prize of "Most Radical Artist in the Late 20 Years of the Century" (2000)
2. Bronze Prize, 3 Dimensional Art Directors & Illustrators Awards Show, Philip Morris Art Awards (1998)
3. Silver Prize, 3 Dimensional Art Directors & Illustrators Awards Show (1995)
4. "Art Stock" Prize (1994)
5. "Judgement's Prize," Object Tokyo Exhibition (1990)
6. "Sponsor's Prize," Object Tokyo Exhibition (1989)
7. 1989 Japan Illustration Award
8. Second Prize from "A the Art Japan" (1988)
9. "Fine Prize," Ishii Award Typeface Competition (1988)
10. Third Prize, The 8th Nippon Graphic Competition (1987)

As evidence of the Prize of "Most Radical Artist in the Late 20 Years of the Century" (2000), the petitioner submits a non-certified, partial translation of what appears to be an advertisement from "Parco Art Projects" stating: "We make the art of the 21st century... This Memorial Art Exhibition present [sic] the most radical artist's [sic] work from 20 years." By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). We note that the petitioner's name appears on the advertisement amongst one hundred other artists. Counsel states: "This prize was awarded to the top 100 artists in the '1980-1999 Memorial Art Exhibition' in Japan." Without a complete translation, counsel's assertion cannot be verified. We further note that no first-hand evidence of an actual "prize" has been submitted. The scant information offered by the petitioner fails to demonstrate that the petitioner's selection to participate in the exhibition (along with ninety-nine other artists) constitutes a prize or award, or evidence of national recognition for excellence in art.

The petitioner submits evidence of Silver (1995) and Bronze Prizes (1998) from the 3 Dimensional Art Directors & Illustrators Awards Show. The national or international significance of the Silver and Bronze Prizes from Dimensional Illustrators, Inc. is not immediately self-evident. These awards will be further discussed below.

The petitioner submits nothing evincing his receipt of a Philip Morris Art Award in 1998. We note that a description of the award contained in the Foreword of a pamphlet from Philip Morris, Inc. only seems to diminish the award's significance. The literature states that the Philip Morris Art Award "seeks to identify gifted young artists" and "focus[es] on the future

potential of artists and prepar[es] them to appear on the international stage.” The literature also states:

Approximately 1,420 artists responded to the initiative and submitted works for the competition. Among these, 100 works were selected, where they will be judged by a distinguished group of Japanese and foreign experts for exhibition in New York... The entrants include people of myriad backgrounds and styles, artists who have already established their reputations, as well as students, and people working in other professions.

The petitioner submits a non-certified partial translation of a promotional document that allegedly lists him among the group of one hundred selected for the 1998 Philip Morris exhibition. The petitioner submits no first-hand evidence that he ultimately won a prize at their 1998 exhibition in New York. Given the differing skills of the entrants noted above, it is reasonable to conclude that participation in the exhibition was certainly not limited to top artists. Furthermore, while it is a recognition of the petitioner's talents that he was among the hundred artists included in their exhibition, the regulation clearly requires the receipt of a nationally or internationally recognized “prize or award.”

According to counsel, the “Art Stock” Prize “selected fifty artists from past winners of the ‘Nippon Graphic Exhibition’ and ‘Object Tokyo Exhibition.’” As evidence, the petitioner submits a non-certified, partially translated advertisement which bears the logo of Parco Art Projects. The incomplete translation describes the event as an “Art Stock Urban Art Auction.” The petitioner's mere selection to participate in an auction featuring fifty artists does not constitute a prize or award. The petitioner submits no direct evidence that he ultimately won a national prize at the Art Stock Urban Art Auction. Throughout this proceeding, counsel repeatedly attempts to classify the petitioner's selection for participation in art exhibitions and auctions as a prize or award, which it is not.

The petitioner submits what he alleges to be a Judgement's Prize and Sponsor's Prize from the Object Tokyo Exhibition. The petitioner fails to provide a certified translation of the prize documentation and it has not been shown that the Object Tokyo Prizes constitute national, rather than local, recognition.

The record contains no evidence of the 1989 Japan Illustration Award. The petitioner submits incomplete, non-certified translations of the Second Prize from “A the Art Japan” competition, Fine Prize from the Ishii Award Typeface Competition, and Third Prize at The 8th Nippon Graphic Competition. It has not been shown that these awards are nationally recognized in Japan rather being limited to only local or student competitions.

On appeal, the petitioner offers documentation demonstrating the significance of the Silver and Bronze Prizes from Dimensional Illustrators, Inc. to the artistic field. Newly submitted literature from Dimensional Illustrators, Inc., states:

The 3 Dimensional Illustrators Awards Show, established in 1989, is an international competition that recognizes excellence in the creation of dimensional and digital illustration in advertising and publishing media. Principals Kathleen Ziegler and Nick Greco produce this prestigious juried competition dedicated to developing, promoting, and honoring the best 3 Dimensional creators in the visual communications industry... Judges have included creatives from *Graphis*, *Wired*, *Discover*, *Newsweek*, and *Time* Magazines; Ogilvy & Mather, Young and Rubicam, Grey Advertising... The exhibition is held annually at the Society of Illustrators Museum of American Illustration in New York.

We note that the names of other individuals are also listed on the petitioner's Silver (1995) and Bronze Prizes (1998). However, after a review of the petitioner's evidence submitted on appeal, we find that these two awards are sufficient to minimally satisfy this criterion.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submits a total of three articles. The most recent, dated January 1, 2001, was published subsequent to the petition's filing. See 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. Even if we were to consider this article, we note that it was published in the United States in a language the vast majority of the U.S. population cannot comprehend. A Japanese newspaper's "satellite edition" issued in the United States does not qualify as major media.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county. Also, a petitioner cannot satisfy this criterion merely by purchasing an advertisement in a national publication.

The remaining two articles from 1993 and 1994 were not accompanied by complete translations. Unattested summary translations of the articles cannot suffice to satisfy this criterion. Without complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that he was featured because of his achievements as an extraordinary artist. We further note that the petitioner has omitted evidence regarding the extent of the publications' circulation. Thus, it has not been shown that the petitioner has been the subject of major media coverage. Two articles featuring the petitioner in 1993 and 1994 fail to demonstrate that the petitioner has attracted the sustained attention of the national press or major media.

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.

To demonstrate eligibility under this criterion, the judging must be on a national or international level and involve other accomplished professionals in the artistic field. For example, judging a national art exhibition carries greater weight than judging an art competition at a local university.

Counsel states: "The petitioner has been a curator and a judge for art works submitted to an online magazine called 'Tumbow Museum' since 1996." The petitioner submits information from the Tumbow Museum's web site stating: "Tumbow Museum were constructed [sic] as a virtual museum on the net for introducing artists by [the petitioner] who is an artist/a curator." The documentation submitted suggests that the petitioner is the coordinator of the Tumbow Museum web site. The web site has had only 9,707 hits since 1997 and its national significance to the artistic field has not been shown. In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher (including graduate student teaching assistants), professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Furthermore, the regulation at 8 C.F.R. 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must reflect these requirements. The petitioner submits nothing showing that his selection of artists to appear on his own web site is indicative of national or international acclaim.

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

Counsel states: "[The petitioner] has done extensive work in advertising and broadcasting in Japan." Counsel indicates that the petitioner's magazine artwork satisfies this criterion. However, the plain wording of the regulation requires "the alien's authorship of scholarly articles in the field." The petitioner's artistic creations are not scholarly articles and therefore cannot

satisfy this criterion. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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

Counsel states: "From 1988 to 2000, ten one-man-shows were held by different galleries on behalf of [the petitioner]." 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). The petitioner provides a listing of fourteen art shows; including one in Germany (1992) and one "at [the petitioner's] apartment in New York, 1990." The remaining twelve art shows were held in Tokyo, Japan. A mere listing of the petitioner's exhibitions fails to satisfy the extensive documentation requirement set forth in Section 203(b)(1)(A)(i) of the Act.

On appeal, counsel argues: "[The petitioner] has a lot of shows in major galleries or museums nationally or internationally." The petitioner submits several documents pertaining to the PIA, PARCO, and Bankamura Galleries in Tokyo. However, the petitioner fails to offer a certified English language translation of these documents. The petitioner's appeal also includes his own description of six galleries that he alleges displayed his work. Mere assertions by the petitioner do not constitute objective, reliable or conclusive evidence. Simply going on record without proper 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). With the exception of a non-certified English translation of a letter from the owner of Gallery House MAYA, the petitioner offers little or no evidence from the galleries themselves confirming the display of his artwork.

The petitioner's appeal also includes photographs of the Sao Paulo Museum and National Art Gallery in Kuala Lumpur, but there is nothing from these museums confirming that they ever displayed the petitioner's work.

The record contains no convincing evidence of the national or international significance of the petitioner's claimed exhibitions. The majority of the exhibitions in which the petitioner participated occurred in places where the petitioner was residing at the time of the exhibitions, such as the twelve shows in Tokyo and the one in New York (at his own apartment). It must be stressed that an artist does not satisfy this criterion simply by arranging for his or her work to be displayed; otherwise most, if not all, visual artists would satisfy this criterion, rendering it meaningless.

Materials in the record indicate that several of the "exhibitions" showing the petitioner's work were intended to facilitate the sale of his artwork. Display of the petitioner's work for purposes of sale carries significantly less weight than does museum display, strictly for the purposes of public viewing. To hold otherwise would be to qualify every artist who allows his

or her work to be seen prior to purchase, thus defeating the restrictive purpose behind this criterion.

The record indicates that the petitioner displayed his work among dozens of other artists and it has not been shown that these other artists enjoyed national or international reputations. Despite counsel's assertions, the petitioner has not submitted evidence to demonstrate his participation in a show or exhibition devoted solely or largely to the display of his work alone. In sum, the petitioner has not shown that his exhibitions enjoy a national or international reputation or that participation in his exhibitions was a privilege extended to only top artists in his field.

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

In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner submits eight witness letters under this criterion, but none of the letters even mention the petitioner's role at a specific organization or establishment. Melvin Spain notes that the petitioner attended his American Art History class. He describes the petitioner as "an eager student learning about American art and improving his English." The petitioner's student participation in an art history class hardly satisfies this criterion. Other witnesses such as Jun-ichi Katagiri, Mayako Ohya, Tuyoshi Ishii, Eita Shinohara describe only the petitioner's abilities as an artist. The petitioner's witness letters will be further addressed below.

The petitioner offers no further evidence relevant to this criterion. The petitioner has failed to provide evidence demonstrating his specific role within an organization or establishment with a distinguished reputation.

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 non-certified translations of letters from four purchasers of his work all alleging payment of "a relatively high fee" for his art. The plain wording of the regulation requires the petitioner to show that he "has commanded" high remuneration "in relation to others in the field." The petitioner must demonstrate that his remuneration ranks him among the highest paid artists from around the country. The record offers nothing a basis for comparison to demonstrate that the petitioner commands a high salary in relation to other artists in the field. Simply providing raw numbers without showing evidence of the remuneration received by top artists cannot suffice to satisfy this criterion. In sum, the petitioner has failed to demonstrate that his artwork is sold within the same price range as the works sold by top artists in Japan or any other country.

The petitioner submits several witness letters, all from individuals based in Tokyo or New York. In his first letter, Melvyn Spain, a semi-retired attorney and volunteer teacher at the Brooklyn School of Art, states: "...I believe that [the petitioner] will readily be as successful here as in his homeland, and perhaps become one of our top artists..." The petitioner submits a second letter from Melvyn Spain on appeal in which he withdraws his earlier statement: "By that statement, I was not commenting, and did not in any way intend to state any opinion, as to whether or not [the petitioner] was one of top artists in Japan or in the world." We must conclude, therefore, that Melvyn Spain's two letters offer little support for the petitioner's claim that he is a top artist.

The petitioner provides a letter from Paul Basista, Executive Director of the Graphic Artists Guild, UAW Local 3030, a labor union for creators of graphic art in New York. The letter, addressed to the petitioner's attorney, thanks counsel for "consulting the Graphic Artists Guild" about the petitioner. The petitioner submits a card confirming his 2000 membership status in the Graphic Artists Guild. Paul Basista's letter states:

Considering the information provided by [the petitioner], the Graphic Artists Guild acknowledges [the petitioner's] documentation establishes him as an artist and illustrator of extraordinary ability in conformance with INS standards. Accordingly, the Graphic Artists Guild does not object to granting [the petitioner] permanent resident status in the U.S.

A consultation is required for a non-immigrant O-1 petition, but is not required in this proceeding. Extraordinary ability in the arts in the non-immigrant context means distinction, which is not the same as sustained national or international acclaim.

The petitioner submits a letter from Alexa Nosal, his former instructor at the Parsons School of Design in New York City, stating: "I have had the pleasure of instructing many talented students who have gone on to forge successful careers as designers. [The petitioner] is one of the more exceptional of these designers/artists."

Mark Marcante, Production Director, Theater for the New City in New York, states: "My judgement is mainly based on the set design and the scenery work that [the petitioner] has created for our recent play, "A House on a Slope." Mark Marcante describes the petitioner as "a leading artist in the field of stage design." He closes his letter by stating that the petitioner is "an artist of exceptional ability."

The witnesses' use of phrases such as "will add greatly to artistic advancement" and "will be the influential artist" in describing the petitioner seem to suggest future promise rather than a past record of demonstrable achievement. These descriptions support the director's conclusion that the petitioner has not yet risen to the top of the artistic field.