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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

[redacted]

File: EAC 01 039 52977 Office: Vermont Service Center Date: JUN 13 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)

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. 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 he 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, 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.

Counsel asserts that the petitioner "won national and international awards and recognition for his outstanding achievement in the art of painting." The record shows that the petitioner won the Golden Award at the World Chinese Painting Exhibition in December 1997, a silver trophy at the First Chinese Painting Competition in April 1998, and two prizes (the Gold Award and the World Mount Art Contribution Award) at the Macau Return Cup International Calligraphy and Painting Competition in December 1999. A co-sponsor of all of these events was the China Artists Association. That association's secretary, Zhonggui Li, states:

> The World Chinese Painting Exhibition . . . was co-organized and co-held by the highest art organizations in China, the competition has its authority and importance in the art field of China. 450 art works were selected from more than 12,000 entries. 2 Gold Awards, 4 Silver Awards and 10 Bronze Awards were issued at the competition.
>
> [For the] "Macau Return Cup International Calligraphy and Painting Competition" . . . 1000 art works were selected from over 3000 entries. 5 Gold, 12 Silver, 20 Bronze Awards were issued.

The World Chinese Painting Exhibition prize appears to satisfy this criterion. The information is less clear regarding the other claimed 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.

Counsel states that the petitioner satisfies this criterion through his membership in [redacted] the petitioner's membership documents in the record identify him as a member of the [redacted] Both of these memberships are local to Guangdong Province. There is no indication that membership decisions are made at the required national or international level, rather than at the provincial level. Furthermore, the record contains no evidence of the associations' membership requirements.

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 submits a photocopied excerpt from *Chinese Artists Who's Who*, indicating the petitioner's sex, birth year, nationality, and membership in the Guangdong Branch of the China Artists Association. The translated excerpt provides no other information. The petitioner is one of

25 artists profiled on page 911 of the book. The book has at least 919 pages, and with 25 artists listed on a page, it would appear to profile over 20,000 Chinese artists. A book of that size, containing so little information about the petitioner, appears to be more of a comprehensive directory than a special form of recognition limited to an elite few. We cannot conclude that the petitioner's 22-character entry in this sizeable tome constitutes qualifying published material about the petitioner and his work.

[redacted] *Chinese Painting* devotes half a page to one of the petitioner's works with a short biographical sketch. Another of the petitioner's paintings is reproduced in Modern Famous Chinese Paintings Selections. Articles about the petitioner have appeared in [redacted] The petitioner was also interviewed on [redacted]

Counsel states that, in keeping with the regulations, "[w]e selectively translated certain paragraphs" of the above articles. 8 C.F.R. 103.2(b)(3) requires "a full English language translation which the translator has certified as complete and accurate." The record does not establish which, if any, of the above publications are major national media rather than strictly local publications in t[redacted] The evidence does not establish that the petitioner is among China's most highly publicized artists, or that nationally published art critics praised the petitioner's 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 record contains letters from the China Artists Association, inviting the petitioner to serve on [redacted] and t[redacted] Cup Young Artists Painting and [redacted] This evidence appears to satisfy the criterion; acting as a judge in this manner does not appear to fall with the normal scope of an artist's routine activities.

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

The record contains three witness letters. Choi Chor-Foo, chairman of the Chinese-American Artists Society of New York Corp., states:

> [The petitioner] is a renowned young Chinese artist.
>
> In 1980, he has successfully started his personal art exhibitions in China, Japan and [redacted] of his paintings have been collected by individuals, collectors, or museums. His "LuJia Park" was selected and installed in the City Hall of Marco. His "Spring Warm" was collected by [redacted] His "Squirrel" and "Lily Flower" were selected as gifts to the [redacted]

[redacted] does not explain how he has personal, first-hand knowledge to attest to the above. It is not readily apparent, for example, that an individual in Flushing, New York, would have direct knowledge that the petitioner's work is in the Macau City Hall, or that he has the standing to speak on behalf of Macau City Hall [redacted] continues:

> [The petitioner's] paintings are vivid and lifelike. His paintings and Modern Mount Art represent the success of a new generation of Chinese artists. His talent and his non-stop creative energy in oriental art have brought him to the top level of fame and achievement in the world of Chinese painting.

[redacted] director of the Center for International Art and Culture, based in New York City, states:

> World artists recognized [the petitioner] in 1980 when he successfully had his art exhibitions in Canton and Hong Kong. Since then he has never stopped his personal art shows and prize-winning participation in national and international art competitions.
>
> I personally know [the petitioner] from an art exhibition in New York this year, where he presented one of the exhibitors. His water paintings represent the new generation in the artistic world. His style breaks the traditional water painting setting by drawing water, flower and mountains as a background with traditional furniture in the center. The combination of the real and the illusory is known as a new generation in painting, and is also known as "Academy Style in Non-Academy Group." [The petitioner] has reached the top in this new generation of art.

Meilin Wang, Chinese painting specialist at Butterfield's (an art auction house with offices in California and Illinois) states:

> [The petitioner] is one of the most outstanding young artists in China. His achievement is highly recognized in Chinese's [sic] art community. . . .
>
> Every visitor was deeply moved by his every single exhibit in the "Young Artist exhibition" which was sponsored by Oriental Art Gallery in New York this July. Art Galleries, Artist Groups, and Students from Art College are inviting [the petitioner] for special exhibitions and exchange ideas. There are few scheduled exhibitions at San Francisco, Boston, and Philadelphia in the near future.
>
> [The petitioner's] tradition skill is very solid with renovation ideas. It's truly an enjoyment with his drawing on his specialty in flowers and landscape. Animals such as eagles, monkeys, and chickens all look alive with his special and renovated expression in his drawing. . . .

> His paintings have been exhibited in Japan, Europe, United States and China. . . . He designed all the artwork for the special ceremony of Macau's return back to China last year.

We note that all three of the above witnesses are based in the United States, whereas the vast majority of the first-hand evidence in the record concerns the petitioner's reputation in China.

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

The petitioner wrote a one-page "thesis" published in *Artist*, which counsel describes as "one of the major art professional publications in China." The record contains no direct evidence to substantiate this characterization. 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).

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

Counsel states that the petitioner "has had over 10 successful personal art exhibitions in China, Japan, Macau and the United States." The petitioner submits promotional materials pertaining to several of those shows. The majority of the petitioner's shows have been in the area of Zhu Hai, where the petitioner resided, and Macau, the former Portuguese colony located some 10 miles south [redacted] The record offers little information about these exhibitions except to show that they took place. The exhibitions outside of China took place at galleries specializing in Chinese art. Some of the promotional fliers for the petitioner's shows assert that he is acclaimed worldwide, but these fliers, by their nature, represent self-serving publicity materials rather than reliable, independent evidence of the petitioner's acclaim.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner has submitted two further witness letters and a certificate of appraisal for one of his paintings. The certificate indicates that one of the petitioner's paintings is worth $6,300. This appraisal, in isolation, does not establish sustained acclaim. For instance, it does not show that the petitioner's paintings routinely command substantially higher prices than other works of similar size and style.

One of the letters is from Zi Zi, identified as a former vice president of the Fine Arts Center in New York and former designer-in-chief at the North Guangdong Academy of Design [redacted] states that the petitioner "is a highly talented and proficient artist" who "has won many awards in the art competition[s]." The other letter is from [redacted] executive director of the Alliance of Queens Artists, who deems the petitioner to be "an artist of extreme achievement" whose "work is in several prominent collections. These new letters, while containing favorable subjective opinions of the petitioner' painting style, do not demonstrate first-hand that the petitioner's reputation extends significantly outside of Guangdong province in China and the

New York metropolitan area in the United States. Furthermore, from their titles, these individuals appear to be local authorities rather than national or international ones.

The director denied the petition, stating that the petitioner has "not submitted letters or recommendations from any of the major artists or art institutions" to show that he is "one of the top artists." The director also noted the absence of "letters from any major art museums or galleries."

On appeal, the petitioner submits a new witness letter and other documentation, as well as copies of previously submitted exhibits. We have discussed, above, some of the deficiencies of the initially submitted evidence. Counsel's assertion that this evidence does, in fact, satisfy the regulatory criteria amounts to a reiteration of a claim rather than a rebuttal of the director's finding. Not every published article appears in major media, not every art expert is a recognized national authority, and so on. The director's assertion that the record contains nothing from major galleries does not imply that the director ignored evidence from what appear to be lesser galleries. The evidence, as a whole, reflects sporadic national activity by the petitioner with a much greater level of local recognition.

[redacted] director of Artist Services at the Copley Society of Boston, states "I have been invited and attended all the art exhibitions that [the petitioner] held in Boston, his more than 50 pieces of art works that I have seen give me unforgettable impression on my mind and they are really unique. [The petitioner] is a contemporary top and prominent artist." [redacted] does not discuss, or claim knowledge of, the petitioner's reputation in China. With regard to his reputation in the United States, [redacted] states that the petitioner "can become one of the extraordinary artists in the big family of the art in America." The conditional phrase "can become" necessarily implies that the petitioner is not yet "one of the extraordinary artists . . . in America."

The petitioner submits a copy of a letter dated August 3, 2001 (five weeks before the denial of the petition) indicating that the petitioner has been nominated for inclusion in the *International Directory of Distinguished Leadership*. The criteria for inclusion are only vaguely described. The number of persons included is not clear, but the letter (from managing editor C.L. White) indicates that the included persons are selected by a "Research Board of Advisors, containing more than 14,000 men and women globally." The record contains nothing about the directory except for self-promoting materials from the publisher. The letter to the petitioner appears to be a "form" letter; the body of the text refers to the petitioner as "a distinguished leader" but never makes any reference to his field of endeavor. We cannot determine that this publication is viewed as prestigious by anyone other than the publisher.

In any event, the petitioner's nomination had not taken place as of the petition's November 2000 filing date, and therefore it cannot retroactively establish the petitioner's eligibility as of the filing date. 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. For similar reasons, evidence of the petitioner's art shows in New York and New England – some of which had not yet taken place as

of the filing date of the appeal, let along the petition – cannot establish eligibility even if the petitioner had established that these events were of national rather than local significance.

The petitioner submits a March 2000 auction catalog, indicating that a 38"x12¾" ink-on-paper scroll was expected to bring $4,000 to $5,000 at auction. The same estimate was applied to a 36"x16" scroll. Counsel asserts that this document shows that the petitioner's painting, appraised at $6,300, is particularly valuable. The petitioner's art work, which unlike the scrolls features color as well as ink, is 78"x200", or roughly 32 times the area of the first auctioned scroll, and 27 times as large as the second. In general, other things being equal, a larger work, involving more media, time, and effort to create, would be expected to command a higher price than a simpler work that is only about 3-4% of that size. The assertion that the petitioner's painting costs more than Serge Hollerbach's $5,000 watercolor "Blond Girl with Newspaper" is, likewise, not conclusive evidence in this regard. The petitioner has not shown that his works consistently command substantially higher prices than comparable works of art. Selecting three works of art, based apparently on their price, and comparing those prices to the appraised value of a single work by the petitioner, does not establish any persuasive pattern. We note that the appraisal documentation does not establish that the petitioner has actually sold any art at such a price; the appraisal derives from an old selling price with an assumed appreciation of 9% annually. The comparison of an appraisal with a pre-auction estimate does not involve the comparison of any realized selling price for any of the art works involved.

The petitioner's career as an artist has not been without success and some level of recognition. Based on the record as a whole, however, we cannot conclude that the petitioner is among the best-known or most highly acclaimed artists in all of China or all of the United States. Crucial claims are either entirely unsupported, or at variance with the evidence said to support those claims, or so vague as to be of no value (such as the assertion that the petitioner's works hang in unnamed museums, according to witnesses with no affiliation with any major museum).

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 a painter 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.