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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.
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Washington, D.C. 20536

[redacted]

File: EAC-01-224-55741 Office: Vermont Service Center Date: JUN 17 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: SELF-REPRESENTED

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.

On appeal, the petitioner argues that the director should have had her original art work[1] evaluated by a professional prior to reaching his conclusion and that, unlike other fields, it is impossible to place any artist in the top five percent of the field. The petitioner provides no explanation for the latter argument.

The regulations provide 10 objective criteria for adjudication of a petition under this classification. The criteria are designed to evaluate an alien's national or international acclaim in the field. It is the petitioner's burden to submit evidence relating to these criteria; the Service is not under an obligation to seek out experts in the field to provide subjective opinions regarding an alien's talent in the field. Moreover, subjective opinions of ability from experts in the field, whether chosen by the petitioner or the Service, are not the type of extensive documentation contemplated by the law or regulations. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. Finally, while the regulations define extraordinary ability as those very few at the top of the field, the evidence for this classification must demonstrate "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. 204.5(h)(3). As such, the petitioner's arguments regarding the inappropriateness of ranking artists is not persuasive since an adjudication of a petition under this classification does not involve a ranking of others in the field, but a determination of the alien's individual acclaim.

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

[1] This petitioner notes that her original art work has not been returned. The appropriate form to request the return of documentation is Form G-884, Request for Return of Original Document.

> 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.

This petition seeks to classify the petitioner 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. In response to the director's request for additional documentation, the immigration consultant who prepared the petition [redacted] discusses three of the regulatory criteria and asserts that since the petitioner "clearly" meets those three criteria further discussion of the remaining criteria is unnecessary. We will address all of the criteria to which any of the evidence relates. The petitioner has submitted evidence relating to 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.

While neither the petitioner [redacted] asserts that the petitioner meets this criterion, the petitioner submitted a copyright registration and a Certificate of Appreciation from the Association Deportiva Hispana and the Latin American Coalition for the Whole Human Family for the petitioner's participation in the 2001 Hispanic Heritage Festival in New Jersey. The United States Copyright Office grants copyright registrations upon request to the creator of any original work. Copyright registrations are not competitive awards for excellence. A certificate of appreciation for participation in a local ethnic festival is not a nationally or internationally recognized award for excellence.

The record also includes several foreign-language certificates in the exhibit labeled "professional titles." 8 C.F.R. 103.(b)(3) requires certified translations of all foreign language documents. Without certified translations, these certificates have little evidentiary value. Also included in the

exhibit is a certificate from the training division of A&N Creative TV confirming the petitioner's completion of a graphic design by computer course. The completion of a course is not a nationally recognized award for excellence and does not reflect 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.

[redacted] asserts that the petitioner meets this criterion based on the following evidence: a letter from [redacted] director of the Center for Latino Arts and [redacted] confirming her intention to hire the petitioner for a summer program to oversee a student mural project; her attendance at the exclusive Iran Caro Airbrush Studio; and the invitations to participate in Iran Caro's Eighth Airbrush National Biennial in Venezuela, an electronic database of Asian, Latino, African, African-American, and Caribbean artists living in New Jersey, and other exhibitions.

The evidence allegedly related to this criterion does not meet the plain language requirements of the regulation. A school, even one where admission is exclusive and competitive, is an educational and training institution. While a school may accept only those students who demonstrate talent and potential, the student pool is selected from those beginning their careers, not the most experienced and talented practitioners in the field. Moreover, students at a school are not analogous to members of an exclusive professional association.

Moreover, a job offer is not comparable to membership in an exclusive association. The employee/employer relationship is not the same as the member/association relationship. For example, the National Academy of Sciences may employ individuals who are not members of this distinguished and exclusive association. Those non-member employees could not meet this criterion.

Further, inclusion in a state-wide database is not membership in an association. Even if we considered a database an association, which we do not, the selection of the artists to be included was not made by nationally recognized experts in the field. Moreover, the pool of artists were those who reside in New Jersey. As such, selection for this database is not evidence of national acclaim.

Finally, artistic exhibitions have their own criterion. An exhibition is not an association and an invitation to display one's artwork at the exhibition cannot be considered evidence of "membership" in the organization presenting the exhibition. The exhibitions will be discussed below under the appropriate 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.

Initially, the petitioner submitted articles about her artwork in *La Prensa*, *La Voz*, *Hechos Positivos*, *Punto Latino*, *Noticiero Colombiano Hispano*, an unidentified local Peterstown, New Jersey publication, and *The Informer* [redacted] asserted, "we have not translated the Spanish articles, as the papers['] contents are obviously clear."

In response to the director's request for additional documentation, the petitioner submitted other articles published in *Latin Somos, La Voz* and *Noticiero Colombiano Hispano*. Once again, these articles are all in a foreign language and the petitioner failed to provide certified translations as required by the regulation.

It is acknowledged that the articles include the petitioner's name and photograph. Nevertheless, a petitioner cannot decide that a given regulatory requirement does not apply to her. It is the petitioner's burden to comply with regulatory requirements regardless of whether she personally believes that the requirements are necessary. Without complete translations, the Service cannot determine the significance of the articles. Moreover, the petitioner failed to provide evidence of the circulation of these publications, some of which appear to be purely local community papers. Local community papers and papers in a language most of the national population cannot comprehend cannot be considered major media. The record does not establish that the petitioner received national media attention in the United States or Venezuela.

The petitioner also submitted an unsigned letter from Univision in Florida thanking the petitioner for her interest in their television show and advising that her petition will be evaluated by the producers. There is no evidence that the petitioner appeared on Univision or that this Spanish-language network is major media.

The letter from the Iran [redacted] asserts that the petitioner appeared on Venezuelan "National Television" on Channel 12 in September 2000 and on Channel 8 in July 2001. The letter asserts, "both programs . . . [have] great ratings in the City of Caracas." A program which only airs in one city of Venezuela cannot be considered major media.

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

Without complete certified translations of the newspaper articles, we cannot determine whether the articles address the petitioner's contributions to the field of art. [redacted] director of the Center for Latino Arts and Culture at [redacted] that the petitioner "is an exceptional figurative painter working in the surrealist tradition. [redacted] continues that the petitioner is "skillfully masterful" and that her work has been described as "dreamy, fluid, and romantic." [redacted] discusses the petitioner's history of exhibitions. This information does not explain how the petitioner has influenced other air brush artists or otherwise made a contribution of major significance to the field of painting. The letter from the director of the Iran Caro studio provides general praise of the petitioner's abilities and discusses her history of exhibitions. The letter further indicates that the studio maintains the petitioner's biography on their website and has invited the petitioner to participate in the Eighth Airbrush National Biennial as a

guest artist. In addition, the record contains confirmation of the petitioner's participation in exhibits and cultural festivals. None of this information suggests that the petitioner has made a contribution of major significance to the field of art.

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

On her resume, the petitioner lists several exhibitions in the United States: [redacted] New York; [redacted] Bar and Gallery in New Jersey; and the First Hispanic Heritage Festival in New Jersey. This information is supported by the record. The petitioner also painted murals for the [redacted] which also hosted an exhibit of her work, in New York and [redacted] New Jersey. The exhibit [redacted] the Second Religious Art Exhibit of Hispanic American Artists and the exhibit at the Venezuelan Consulate was the Four Artists and a Nation exhibit to which the petitioner donated one of her paintings. The petitioner also submitted a letter from [redacted] asserting that the petitioner displayed her work at two exhibitions at the studio. The letter from the director of the Iran Caro Studio asserted that the petitioner displayed her work at two exhibitions in Venezuela, one while a student and one after graduation.

The director concluded that while the above exhibits could arguably "meet" this criterion, exhibits at modest venues are not comparable to exhibits at distinguished museums and galleries. On appeal, the petitioner asserts that she finds this conclusion by the director "the most objectionable" as the nature of the exhibit is unrelated to her "overall ability as an artist."

The petitioner's argument is not persuasive. While it is more accurate to state that evidence relating to a specific criterion is insufficient to meet that criterion unless indicative of national acclaim, the director's ultimate determination that exhibits at modest venues cannot establish eligibility for this classification is valid. While the petitioner may be correct that some artists are not recognized for their abilities during their lifetime, it remains that the regulations require more than talent, a necessarily subjective determination. Rather, a petitioner must provide evidence of national or international acclaim. An unrecognized talent cannot meet the regulatory requirements for this classification.

Exhibitions are inherent to the field of art. In order to make a living as an artist, one must exhibit one's work. Exhibitions at local banks and churches are simply not evidence of national acclaim. The record contains no information regarding how the artists were selected for the exhibition at the Venezuelan Consulate. Even if the exhibit were considered indicative of national recognition in Venezuela, the petitioner had resided in the United States for four years at the time of filing. In order to demonstrate sustained national acclaim, she would need to demonstrate that she continued to enjoy acclaim in the United States.

Finally, [redacted] indicated that the Center for Latino Arts and Culture had invited the petitioner to participate in upcoming shows. The record does not reflect that the petitioner had participated in those shows prior to the date of filing. As stated above, the Iran Caro Studio had

also invited the petitioner to participate as a guest artist at t[redacted] The record does not reflect that the petitioner had participated in this event as of the date of filing. In fact, the invitation to participate was issued three months after the date of filing. Similarly, one month after the petition was filed[redacted]invited the petitioner to participate in an exhibition in February 2002. As such, they cannot be considered evidence of her eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

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

In response to the director's request for additional documentation[redacted]asserts that the petitioner meets this criterion because she was invited to oversee a summer mural painting program [redacted]her work appeared on "national" television in Venezuela, and she displayed her work at two exhib[redacted] This argument is not persuasive. We cannot conclude that every artist who participates in a summer program at a distinguished university plays a leading or critical role for that university as a whole. Moreover, as stated above, the record indicates only that the petitioner's work was featured on a local television show. Regardless, every artist's work that appears on a television program devoted to covering art and culture cannot be said to play a leading or critical role for the organization which produces the television show. Finally, displaying one's work at a studio that presumably exhibits the work of many artists is not evidence of a leading or critical role for that studio above and beyond every other artist whose work is on display.

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 did not originally claim to meet this criterion and submitted no evidence relating to it. On appeal, however, the petitioner argues that pay is not "relative" to an artist because many artists are not in the business for the money. Even if we accepted this argument, there are nine other criteria for this classification, of which an alien must meet only three. The petitioner has not met one of them.

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 herself as a painter 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 evidence indicates that the petitioner shows talent as a painter, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.