

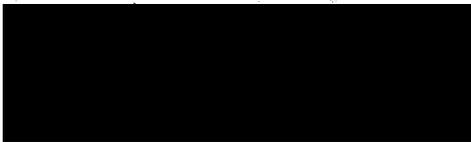


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U.S. Department of Justice
Immigration and Naturalization Service

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



17 JUN 2002

File: LIN 01 070 53873 Office: Nebraska Service Center Date:

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:
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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

It is noted that the petitioner was initially represented by attorney [REDACTED]. On May 9, 2001, the petitioner submitted a letter to the Service stating that she was no longer represented by counsel. In this decision, the term "prior counsel" shall refer to [REDACTED].

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 that she qualifies 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 December 9, 2000, seeks to classify the petitioner as an alien with extraordinary ability as an artist (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 that, she 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.

In competitions held by the Colorado Springs Art Guild, the petitioner won a "Best of Show" award in the "Regional 2000 Fine Art Show and Sale" and was one of three "Juror Award" recipients in the "1999 Regional Juried Fine Art Exhibition and Sale." Brochures provided by the petitioner clearly demonstrate that these were regional rather than national competitions. We note that all of the participating artists were from the State of Colorado. Thus, the petitioner has not shown that these awards reflect national recognition in her field. For example, the petitioner offers no evidence that the competitions in which she participated included prominent artists from throughout the United States, rather than being limited to only local artists from Colorado.

The petitioner also won "Second Honorable Mention" for the Juried Workshop Exhibition (1995) held by the Friends of the [REDACTED] at the Leech Studio in Sarasota, Florida. The petitioner submits a notice bearing the letterhead of Friends of the [REDACTED] of Sarasota, Florida stating:

The Leech Studio would like to congratulate you on winning this award of \$50.00 contributed to the Friends of the Arts and Sciences by American Artist Magazine.

American Artist is a first rate magazine that has been so kind as to participate for the first time in our exhibition of 1995. They are the magazine you should turn to for all of your watercolor information. You may want to use this prize to subscribe to this excellent publication.

An example of a nationally recognized award would be a prize from the Annual Juried Exhibition of the American Watercolor Society. According to the Society's website, their competition is open to all artists and exhibition awards exceed over \$30,000, with over ten medals given annually. "An outstanding artist or individual who has contributed to the advancement of fine art in general or watercolor in particular" is honored by receiving the [REDACTED] highest recognition. The petitioner offers no evidence of her receipt of national awards comparable to those awarded by the American Watercolor Society.

In sum, the petitioner's awards, while indicative of her talent as an artist, reflect regional rather than national recognition of her work. The petitioner has failed to provide evidence demonstrating that her three local awards enjoy significant national or international stature.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that judges membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation.

The petitioner submits her membership cards for the Colorado Springs Art Guild and the American Watercolor Society. The petitioner also provides a copy of the membership list for the Pikes Peak Watercolor Society reflecting her name and address. The record contains no evidence listing the associations' specific membership requirements, such as the fulfillment of certain criteria or election by nationally recognized artists.

The petitioner's membership card from the American Watercolor Society reflects her "Sustaining Associate" status. According to the American Watercolor Society's website, www.watercolor-online.com/AWS, accessed May 14, 2002: "Sustaining Associates do not vote, attend business meetings, wear the Society ribbon or use the Society's initials after their name." The website lists the petitioner as a Sustaining Associate. Simply providing one's mailing address and paying a fee of \$30.00 are all that is required for attainment of Sustaining Associate membership status. In fact, one does not even need to be a practicing artist. All visitors to the American Watercolor Society's website "are cordially invited to become a Sustaining Associate." In order to be an Active Member, however, one must "exhibit in two American Watercolor Society annuals" and meet other exclusive criteria. Active members in the Society number approximately 500, with almost 2000 sustaining associates. Clearly, the petitioner's membership status in this organization is not reflective of achievement at the very top of her field.

On appeal, the petitioner asserts that these memberships "demand only the highest standards of achievement." However, the record does not support this conclusion. The petitioner offers no evidence that any of her memberships required outstanding achievements, as judged by recognized national or international experts in her field. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record does not reflect that the petitioner's memberships require outstanding achievements for their members in the manner of highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

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. 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 evidence that her portrait, "Little Ray of Sunshine," was published on page 37 of *The Artistic Touch 3*, a book featuring the works of 110 other contemporary artists. While publication in this book is reflective of some attention received by one of the petitioner's paintings, it does not single out the petitioner as superior to the 109 other artists featured in this volume or the numerous artists featured in the first two volumes.

The petitioner submits a "Proclamation" certificate reflecting that the petitioner was included in *Nationwide Register's Who's Who in Executives and Business 2000-2001 Edition*. However, the plain wording of the regulation requires the petitioner to submit "published materials about the alien." Without the actual published piece, it cannot be determined whether the petitioner was featured for her achievements as an extraordinary artist. The proclamation refers to the publication as being "a carefully constructed networking publication of executives and professionals" and describes the petitioner as "be[ing] of exemplary character." The proclamation did not include the exact date of publication, as required by the regulation. It appears that the edition including the petitioner 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.

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 paid promotional advertisements in a national or local publication.

The petitioner submits three local articles appearing in the *Colorado Springs Gazette*. Two of the articles devote only two sentences to the petitioner while the third article describes the opening of her private gallery in Colorado Springs. The petitioner also submits a local newsletter and press release from the Charlotte County Art Guild. The newsletter devotes only one sentence to the petitioner and the press release does not qualify as published material.

It should also be noted that the petitioner offers insufficient information regarding the extent of the circulation of the published materials described above. For example, while the author of *The Artistic Touch 3* indicates that six museums and colleges carry the book and that Northlight Press has purchased 3000 copies the book, no evidence has been provided regarding the total number of copies of book that have been sold or distributed. The circulation of a few thousand copies is insufficient to reflect the widespread distribution necessary to demonstrate national or international acclaim. Thus, it has not been shown that the petitioner has been the subject of major media coverage.

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

The petitioner submits several letters from her personal and professional acquaintances; mostly from her neighbors, buyers of her artwork, or individuals thanking her for local charitable donations. Many of these letters describe her talents as an artist. Clearly, the petitioner is admired in the communities in which she resides. However, if the petitioner's work is not widely praised outside of her local communities, then it cannot be concluded that she enjoys sustained national or international acclaim as one who has reached the very top of her field. The construction of the regulations demonstrates the Service's preference for verifiable documentary evidence, rather than subjective opinions of witnesses selected by the petitioner.

Several of the letters submitted were written in 1997 or 1998 and appear more relevant to a family-based petition than an employment-based petition. For example, Bernice and Sam Gourse state:

[The petitioner and her spouse] have been our neighbors and good friends for a long time, and we feel that our lives have been enriched by their friendship. They are a close family unit and it is a pleasure to note that they are exemplary models of honesty and integrity for their children. We have the very warmest admiration for their high moral values and sincerity.

[The petitioner] is a gracious and charming hostess, an excellent cook and homemaker, and an exceedingly talented artist. Personally, we own two of her paintings which are a focal point in our home. She is acclaimed for her unusual skill and versatility in pastel technique, as well as in her excellent oil paintings which grace so many walls in Florida. Her talent and energy seem boundless and we are continually in awe of her accomplishments.

[The petitioner's spouse's] world-wide business experience and contacts through the years attest to his ability and success; [the petitioner and her spouse] are a pair who can only be the most welcome of residents in any community. They will be sorely missed by their many friends here.

While the witnesses speak favorably of the petitioner's talents as a painter, they provide no information regarding her contributions of major significance to the artistic field. We note that the majority of the petitioner's witnesses are not even experts in her field of endeavor. For example, the petitioner offers no evidence from prominent artists or renowned art critics addressing her specific contributions of major significance. We do not dispute the credibility of the petitioner's witnesses or her valued participation in various volunteer projects. However, the petitioner's contributions appear limited to her local communities.

Prior counsel indicates that the petitioner's artwork itself demonstrates a contribution of major significance to the field of art. While the petitioner has submitted paintings for display at art exhibitions, such submissions are common among artists and do not necessarily set the petitioner apart from other artists. The display of the petitioner's work will be further addressed below.

We note that the record contains no evidence from museums or gallery owners to distinguish the petitioner's work as superior to that of other painters. Further, the record does not indicate that the petitioner's work has had a significant influence on other artists, nor does it show that any specific works by the petitioner are particularly renowned as works of contemporary art. Thus, it has not been shown that the petitioner has made a contribution of major significance to her field.

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

Prior counsel argues that the petitioner's portrait, "Little Ray of Sunshine," which was published on page 37 of *The Artistic Touch 3*, satisfies this criterion. This evidence has already been addressed under a previous criterion. Further, the plain wording of the regulation requires "the alien's authorship of scholarly articles in the field." The petitioner's four-sentence description of her painting hardly qualifies as a scholarly article and therefore cannot satisfy this criterion.

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

The petitioner documents six art show exhibitions between 1993 and 2000 in New Mexico, Colorado and Florida. The record contains no evidence of the national significance of these venues or of the exhibitions. The majority of the exhibitions in which the petitioner participated occurred in areas where the petitioner was residing at the time of the exhibitions. 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 the "exhibitions" showing the petitioner's work

were intended to facilitate the sale of her 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. Further, the record indicates that the petitioner displayed her work among dozens of other artists and it has not been shown that these other artists all enjoyed national or international reputations. Nor has the petitioner demonstrated her participation in a show or exhibition devoted solely or largely to the display of her individual paintings. In sum, the petitioner has not shown that her exhibitions enjoy a national reputation or that participation in her exhibitions was a privilege extended to only top artists in her 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 her role within the entire organization or establishment and the reputation of the organization or establishment.

Prior counsel states that the petitioner has performed a leading or critical role for the Seoul [REDACTED] an art teacher. The petitioner submits a letter from the school's headmaster, [REDACTED] describing the school as "a private school subsidized by the [REDACTED]. He further states: "The results she achieved in her classes have always been very successful and [her student's works] could be exhibited [and used] to decorate our school building." The petitioner offers no further evidence under this criterion. The petitioner has not submitted evidence demonstrating that the [REDACTED] has a distinguished reputation when compared to other private schools. Further, the petitioner offers insufficient evidence demonstrating how she fulfilled a leading or critical role at the school. The letter from [REDACTED] does not explain how the petitioner's role was any different from the school's other successful teachers. Thus, the petitioner has failed to satisfy this criterion.

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 evidence of four donation forms reflecting the "estimated values" of the paintings that she donated to the [REDACTED] annual telethons. The petitioner also submits price lists reflecting the cost of her paintings. The two most expensive paintings were priced at \$3,000. However, the petitioner offers nothing to confirm that the paintings were actually sold for these prices or that these prices were significantly high.

The plain wording of the regulation requires the petitioner to show that she "has commanded" remuneration that ranks her among the highest paid artists in her field. The petitioner has failed to demonstrate that her artwork is sold within the same price range as paintings sold by top artists in the United States.

It must be emphasized that merely submitting evidence intended to address at least three of the criteria is not necessarily sufficient to demonstrate that the petitioner has sustained national or international acclaim at the very highest level. 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. The petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as an artist (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 in her field, and that she has earned a degree of recognition in her local communities, but the petitioner has not shown that her achievements have consistently 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.