

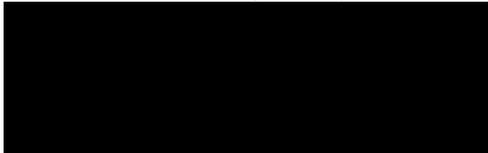


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: [Redacted] Office: Vermont Service Center

Date: 6 MAR 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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. The Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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 he qualifies as an alien of extraordinary ability in his field of endeavor.

On appeal, the petitioner submitted translations of documents without copies of the original foreign language documents.

On January 10, 2001, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, dismissed the appeal, partly due to the lack of copies of the original foreign language documents for which the petitioner submitted translations.

On motion, the petitioner submits many of the foreign language documents.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on March 2, 1998, seeks to classify the petitioner as an alien with extraordinary ability as an artist and art restorer. The record reflects that the petitioner was the chief restorer responsible for restoring 14 national projects, including the restoration of 60 icons displayed at the First Museum Church in Bulgaria, the 18th Century mural paintings in St. George Church in the town of Oryahovo, and the mural paintings at the St. Cyril and Methodius Church in Svishtov.

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. The petitioner claims to meet 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.

On August 16, 1995, the petitioner received a 200 Leva prize from the Ministry of Culture of Bulgaria in recognition of his work on the 60 icons displayed at the First Museum Church in Bulgaria. In its decision, the AAO noted that the petitioner had not submitted the foreign language documents regarding this prize, nor did the record demonstrate the significance of the prize. On motion, the petitioner submits a copy of the original foreign language document. The letter from the Ministry of Culture states that "this prize of high achievements in the field of the art[s] is awarded once a year or per several years depending on the achievements in this sphere." The record reveals that the petitioner was awarded 200 Leva, or approximately \$90, for this award. That an award is only issued annually does not necessitate that the award has major significance.

On motion, the petitioner submits evidence that he recently received the Gold Phenomenon award. This award received some press coverage, although, as will be discussed below, the petitioner has still not resolved whether *Posoki* is a major media publication. The newspaper article indicates that the prize is based on "exceptional contribution in art" and is awarded annually in art, science, and sport. The petitioner received a statue and certificate for his award. The petitioner, however, received this award after the date of filing. As such, it cannot be considered evidence of his acclaim at the time of filing.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The AAO concluded that the petitioner had not met this criterion because he submitted translations of documents without copies of the original foreign language documents. The AAO also concluded that the membership requirements for the Bulgarian Artists Union and the Creative Fund were too general and that the associations appeared to be trade unions. In response, the petitioner resubmits the same information including copies of the original foreign language documents. The petitioner failed to address the AAO's concern that these associations are merely trade unions in which membership is required for success in the field. It is acknowledged that the AAO's previous decision failed to specifically address the President of the Union of Bulgarian Artists' assertions that membership requires participation in at least national and international exhibitions and the winning of prizes. Exhibition, however, is inherent in the field of art, and any successful artist has exhibited his works. The president of the union did not specify the level of prize a member must win.

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 record contains three articles regarding the petitioner, two in the publication *Posoki* and another in an unspecified newspaper. The AAO concluded that the petitioner had not established the circulation of either newspaper. As such, the AAO concluded that the petitioner had not established that the articles appeared in major media. On motion, the petitioner fails to submit any new evidence regarding *Posoki* or the other publication. Thus, the petitioner has not addressed the AAO's concerns regarding this criterion.

It is acknowledged that both the petitioner and his translator assert that the articles discussed above are only examples of the significant press coverage the petitioner has received in leading national and international newspapers and magazines. 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). It remains, the record does not include any additional evidence of published material about the petitioner.

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 AAO concluded that the petitioner's work as a teacher would not suffice for this criterion as "judging" one's students is inherent to the job of teaching. The AAO acknowledged that the petitioner had submitted a translation indicating that the petitioner had served on art juries, but noted that the petitioner had not submitted a copy of the original foreign language document. On motion, the petitioner submits a copy of the original foreign language document. Specifically, the

President of the Union of Bulgarian Artists states that the petitioner served on art juries several times between 1980 and 1996. The president further indicates that as a member of the juries, the petitioner estimated works of art and restoration works made by artists [sic] members of the Union of Bulgarian Artists. We conclude that the petitioner has sufficiently addressed the AAO's concerns regarding this criterion. Thus, the petitioner meets this one criterion.

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

The AAO concluded that the petitioner had not demonstrated that he had influenced the field of art restoration. The petitioner does not address this issue on motion.

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

The AAO concluded that the petitioner's own assertion that his work was on display was insufficient. The AAO further stated that the petitioner had failed to submit copies of the original foreign language documents allegedly translated as evidence of the petitioner's exhibitions. Finally, the AAO noted that an artistic exhibition could satisfy this criterion only if the petitioner demonstrated that his work earned substantial recognition at the show. On motion, the petitioner submits the copies of the original foreign language documents. The Chairman of the Bulgarian Artists Union verifies that the petitioner exhibited his work at a one-man show in Italy in 1988, three one-man shows in Bulgaria in 1988 and 1989, and at shows in Austria, Germany, France, Belgium, Spain, Japan, Morocco, Australia and Greece between 1985 and 1993. The Chairman further asserted that "art galleries and collectors in Bulgaria, Italy, Germany, Spain, Austria and Belgium possess a number of his works of art." This claim is reiterated in a recent newspaper article in *Posoki*. The President of the union asserts that the petitioner has participated in nine exhibitions in Germany, one in Atlanta, and two in New York in the past three years. The President of the German-Bulgarian Friendship Society, Hamburg, verifies that the petitioner exhibited his icons and demonstrated his techniques of iconography in Hamburg in 1996. An invitation to the Exhibition of Bulgarian Icons in Hamburg includes the petitioner as one of five Bulgarian masters of icons whose work is on display. The record contains little information about the significance of this exhibit or the reputation of the German-Bulgarian Friendship Society.

As stated above, exhibiting one's work is inherent in the field of art. Without letters from the galleries in Bulgaria, Italy, Germany, Spain, Austria and Belgium which allegedly keep the petitioner's work on permanent display, we are unable to determine the significance of those displays.

Finally, the icons and murals restored by the petitioner are on display. Any artist who restores art is restoring items for display. The restored items, however, are not on display as the work of the petitioner. The petitioner has not demonstrated that the museum where the icons are on display or the churches where he restored the murals credit him with their restoration. As such, their display is not evidence of the petitioner's national acclaim.

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

The AAO acknowledged that the record included a letter from the Legal Experts Office at the County Court, Pleven which certified that the petitioner was a part-time expert in iconography and restoration works of fine arts. The AAO concluded, however, that the petitioner had not demonstrated that the Legal Experts Office was a distinguished organization. On motion, the petitioner submits no new evidence regarding the reputation of the Legal Experts Office.

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

The record contains a letter from the Chairman of the Union of Bulgarian Artists who asserts that the petitioner's annual compensation is "8-10 times higher than the remuneration of his colleagues-restorers." In addition to noting the absence of a copy of the foreign language document, the AAO also noted that this statement is insufficient as it is not clear whether the Chairman is comparing the petitioner only to his immediate colleagues, his assistants, or to the entire field of restorers, which would include the heads of other teams. While the petitioner submits a copy of the foreign language document on motion, he fails to submit new evidence which might clarify the Chairman's statement.

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 an artist 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 indicates that the petitioner shows talent as an artist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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 previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of January 10, 2001 is affirmed. The petition is denied.