

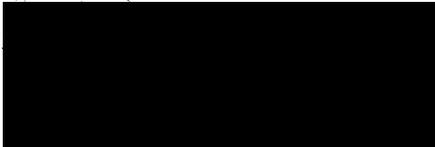


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



File: EAC-00-162-53462

Office: Vermont Service Center

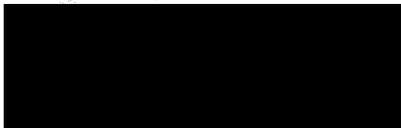
Date: 12 MAR 2006

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 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, 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 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 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.

As noted by counsel, the director stated, "sustained national acclaim, in and by itself, does not automatically establish that the beneficiary is, in fact, one of those few who are at the top of their field of endeavor." We concur with counsel that this statement goes beyond the regulations. A petitioner need only demonstrate national, not international acclaim. Thus, the director's frequently stated concern that the petitioner has not established notoriety outside China is misplaced. The petitioner resides in China and it is in China that she claims to have sustained national acclaim. Thus, the petitioner need not demonstrate notoriety outside China.¹ While the director did err in this respect, he also concluded that the petitioner had not demonstrated national acclaim in China. As we concur with the director on this latter point for the reasons discussed below, we do not find that the director's misstatement constitutes reversible error.

Further, the director states, "the fact that the beneficiary meets some of the above criteria as an Artist, mostly in her home country, does not by itself, establish that she has achieved a level of extraordinary ability." This statement is somewhat poorly worded. It would be nonsensical, however, for the director to conclude that a petitioner was eligible under the regulations but that the petition was not approvable. Thus, a more rational interpretation of the director's decision is that a petitioner who merely submits documentation relating to or addressing three criteria has not necessarily demonstrated national or international acclaim. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim. Moreover, the director does not appear to have concluded that the petitioner met at least three criteria, as required.

The petitioner has submitted evidence which, 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.

The petitioner submitted three certificates of recognition and medals awarded at the International Culture Exchange Exhibition in Japan in 1996 and 1997. Jinbiao Zhang, one of the Chinese judges of the Japanese competition asserts that it has 4,000 participants from China, Taiwan and Japan and "all the prize-winning paintings and calligraphy have been exhibited in the Tokyo Art Museum." Zhiyuan Cong, Professor of Art at William Patterson University writes:

The awards [the petitioner] has won are prominent and are awarded by recognized institutions with international reputations; the awards and the awarding bodies are well known to me. In particular, I note her gold and silver prizes from the Japan National Institute of Calligraphy and Painting. . . . She has been the sole or one of two Chinese winner[s] in the Japanese competitions, and this indicates the strength of her work and her ability to achieve recognition from national committees outside China.

¹ Had the petitioner moved to another country the director would be justified in considering whether the petitioner continued to enjoy sustained acclaim in her new country of residence.

The petitioner also submitted evidence that she received a gold medal (1999), silver medal (1999), bronze medal (1997) and the "excellence prize" (1993 and 1995) at the Second, Third, Fourth and Fifth International Contest and Master Work Exhibitions in China. Documents which appear to represent translations of the introduction to a book displaying the winning works indicates 5,000 to 6,000 works were submitted and that the winning paintings were displayed in China, Japan, Belgium, and Singapore. The petitioner also received a "special recognition" at the 1997 Welcome Hong Kong Return competition for a work that was subsequently displayed at the Beijing National Art Museum as part of an exhibition of the winners of this contest. The petitioner also received certificates for excellence at a conference she attended by invitation and an award at the Belgium Chinese Art Festival.

Cai Xingyi, Senior Editor and Art consultant for the Overseas Chinese Artists Association of the United States asserts that many of the above awards are comparable to such literary awards as the National Book Awards or even the Pulitzer Prize. Mr. Cong asserts that these awards are equivalent to awards from prominent art institutions or museums, and to publication by major art publishers.

The director acknowledged that the petitioner had received certificates, prizes, and awards. The director did not state whether or not these prizes were significant enough to meet this criterion. The record reveals that the competitions where the petitioner won her awards garnered media attention and that the winning works, including the petitioner's, were displayed at major museums. As such, we conclude that the petitioner meets this criterion.

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 petitioner submitted her membership card for the Culture and Arts Market Research Center of the Chinese Academy of Art. The accompanying information about the association provides:

All the members are the specialists or masters in their field with very strong expertise and most of the members have master or above master level education.

While the association may include experienced and acclaimed masters in the field, it also includes mere "specialists." A specialist is someone who has merely focused on a particular area, and may not have had an outstanding achievement. The petitioner is also a member of the Overseas Chinese Artists Association of the United States. The petitioner submitted some Chinese-language information about this association, but failed to submit a translation. In light of the above, the petitioner has not established that the associations to which she belongs requires outstanding achievements of all their members.

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 submitted several newspaper articles, some without translations. Many of the newspaper articles are reviews of books which include the petitioner's work. These cannot be considered published material primarily about the petitioner personally. The *National Chinese Painting and Calligraphy Journal* published a review of the petitioner's work, however, the circulation of this journal is not documented in the record. In addition, without information regarding the circulation of the newspapers in which the articles were printed, we cannot determine whether they constitute major media.

The petitioner's paintings and mini-biographies have appeared in various Chinese publications. For example, the petitioner submitted a brief biography printed in Name and Address List of Famous Chinese Calligraphist and Painters in the World. The record, however, contains no information regarding the significance of this publication or how many artists' names appear in this publication. The record contains a letter congratulating the petitioner "for being compiled into this 'Dictionary of Heroic Model of People [sic] Republic of China.'" The record does not include exactly what information about the petitioner was "compiled" into this publication or the publication's significance. The petitioner's mini-autobiography also appeared in the Dictionary of Contemporary Chinese Cultural Celebrities. Once again, the record does not indicate how many other artists' biographies also appear in this publication. Appearing as one of hundreds of other successful artists in a book published frequently is not evidence of national acclaim.

The record contains an "editorial notice" to the petitioner advising her that her paintings will appear in Resplendent Mirror of the Work of Contemporary Chinese Painting and Calligraphy Masters, a book which, according to the notice, "includes the works of most of the famous contemporary masters." A review of the book published in *China Today* indicates that it is "an active recording of the most famous contemporary Chinese painters. It has several volumes and it is a most prestigious large scale dictionary." In addition, the petitioner submitted a "publication certificate" certifying that one of her paintings appears in A Premier Calligraphy and Painting Album by Talented Chinese Artists, Vol. 3. The petitioner is also recognized on a page of Modern Chinese Artistic Paintings.

Even if we considered the publication of the petitioner's paintings to be published material about the petitioner, the record does not sufficiently establish that any of these books can be considered major media. The record contains no evidence regarding how many of these books are sold or their influence. As with the mini-biographies, publication of one painting in a book presenting the works of hundreds or even tens of other artists, especially as part of a multi-volume set, is not evidence of the artists' acclaim.

In response to the director's request for additional documentation, the petitioner submitted evidence of additional published mini-biographies and paintings in similar publications. Most of this material is not dated and it is not clear whether these books had been published as of the date of filing. As such, they cannot establish the petitioner's acclaim as of the date of filing.

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 petitioner is included on the "Twentieth Century Celebrated Painting and Calligraphy Selection Editor List," published in the *China National Painting and Calligraphy Daily*. In addition, the Market Research Center of the Chinese Academy of Art assigned the petitioner "for reporting and investigating the commercial art market, auction market, replica market, consulting and appraising status and other activities." The translation of the Market Research Center's notice does not indicate to which location in China the petitioner was so assigned. The record contains no information about the significance of these appointments or the selection process.

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

Jiahua Wang implies that the petitioner has contributed to her field of Chinese painting, but fails to provide any specifics. While Mr. Wang states that the petitioner "set herself to paint things which the ancients had not represented so as to become creative and novel," he does not provide examples of how this style influenced other painters in China or elsewhere. As such, we concur with the director that the petitioner has not established that she meets this criterion.

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

The record reveals that the petitioner's work appeared in major museums in China, Belgium, and Japan as part of various contest winners exhibits. While every successful artist exhibits and sells her work, the petitioner's exhibits appear to be well beyond the rented gallery exhibits inherent to the field. As such, she meets 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 did not initially claim to meet this criterion; however, in response to the director's specific request for evidence to address this criterion, the petitioner claimed that she is able to meet it. She submitted evidence indicating that the average salary in China for workers in the fields of education, culture, and art is RMB 7,474. While counsel asserts that this is an annual salary, the charts themselves do not so indicate. The petitioner also submitted a letter from Jinbiao Zhang, Associate Chief Editor of the Shanghai Calligraphy and Painting House, confirming that the petitioner had exhibited her paintings at a subsidiary of that gallery and that in the past two years she has sold 40 paintings for an average price of RMB 6,000, which, as noted by counsel, averages RMB 120,000 per year. Assuming the RMB 7,474 is an annual wage, it is still an average wage. That the petitioner earns more than the average worker in the combined fields of education, culture, and art is not evidence that her salary is significantly high when compared with other well paid individuals in her field. The record does not contain evidence regarding what other master artists' paintings sell for.

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 an artist 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 an artist, 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.