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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: EAC-00-069-53918

Office: Vermont Service Center

Date: 03 MAY 2002

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 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. In a detailed opinion that considered each of the regulatory requirements separately, the director determined the petitioner did not meet at least three criteria and, thus, 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

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(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. 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 won the gold prize at the National Shu Er Xuan Grand Exhibition Competition in 1995, first prize in the Hong Kong "Special Art Cup" exhibition competition, and the third Golden Swan prize in 1999. Counsel asserts that the National Shu Er Xuan competition is the "highest ranked professional and official prize in Calligraphy and Painting in China," and that over ten thousand artists from China, the United States, Canada, France, Italy, Belgium, Japan, Singapore, Malaysia, and the Philippines competed for the Golden Swan prize.

In response to the director's request for additional evidence regarding the significance of these awards, the petitioner submitted a letter from the Secretary of the National Golden Swan Award Committee regarding the National Shu Er Xuan competition. The secretary asserts that there were 10,000 competitors in 1995 and that the judges awarded 10 gold awards, 100 silver awards, and 100 bronze awards. The petitioner also submitted a letter from the International Special Talents Association which organized the Hong Kong "Special Art Cup" competition. The letter reflects that of the 1,660 art pieces at the exhibition, the judges awarded 3 first prizes, 10 second prizes, and 20 third prizes. Finally, the petitioner submitted a letter from [REDACTED] Director of the Committee of the Golden Swan Art Competition. She states:

The Golden Swan Art Competition is a Chinese national high-level artwork competition, which is held once every three years. In the 3<sup>rd</sup> International Golden Swan Art Competition [held at the World Art Center in New York City], more than 10 thousand Chinese artists from more than 19 countries around the world participated. 11 hundred pieces of art have been selected for awards.

The competition was held in New York and included Chinese artists from around the world. Yet, the record contains no press coverage of the event in major media. In fact, the record contains little national press coverage of any of the above competitions. Moreover, the petitioner has not demonstrated that the prize-winning works from any of these contests were subsequently displayed at major museums. As such, it is not clear that these are nationally or internationally recognized contests. On appeal, the petitioner submitted evidence of an award won after the date of filing that cannot establish her eligibility at the time of filing. Even if we concurred with the director that the petitioner meets this criterion, it is only one 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 is a member of the China Industrial Art Association, the Special Art Committee, the International Special Talents Association, and the Singapore Sin China International Arts

Association. The petitioner also serves as the senior art technician for the Shanghai Jiafeng Special Art Corporation. The petitioner submitted an article regarding this corporation, an "export-oriented economic entity," and the presentation of [REDACTED] tripod to the United Nations. The types of association membership contemplated by the regulations do not include employment with a commercial company.

In response to the director's request for additional documentation, the petitioner submitted a letter from the International Special Talents Association. The letter asserts that the association has 200 members, all of whom must demonstrate "special talents in art or art technology and also must have outstanding achievements and contributions." The letter does not define or provide examples of "outstanding achievements." Nor does the letter reflect that recognized national or international experts in the field judge members. Moreover, the official bylaws of the organization would be more persuasive than a letter prepared in support of the petition.

*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 provided evidence of her biography in World Calligraphers and Painters, the Chinese edition, and articles printed in the *Xing Tao Daily*, the *Ming Daily News*, the *Community News Sunday*, the *China Press*, the *World Journal*, and the *Liberty Times*. Some of these "articles" appear to be advertisements for the petitioner's exhibitions in community papers.

The director requested additional evidence regarding the location and circulation of these publications. In response, the petitioner submitted new articles published in the *Economic and Trade Reporter* and the *Liberty Times* after the date of filing. The petitioner submitted no evidence to support counsel's assertions that the *Economic and Trade Reporter* is one of the major newspapers in China or that the *Liberty Times* is one of the major Chinese-language newspapers for the East Coast of the United States. Regardless, 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 regional publication or a publication printed in a language that most of the population cannot comprehend. As such, the *Liberty Times* cannot be considered major media.

The director concluded that the petitioner had not submitted the requested information regarding the location and circulation of the papers which have published articles about the petitioner. On appeal, counsel states that the petitioner is submitting such information. All that the petitioner submits relating to this criterion, however, are new articles published after the date of filing which cannot establish her eligibility at the time of filing. We concur with the director that the petitioner has not established that the submitted articles appeared in major media.

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

While counsel did not initially claim that the petitioner met this criterion, on appeal he argues that the petitioner is responsible for introducing hair embroidery into the United States. The record does not reflect that hair embroidery art has gained popularity in the United States, much less that any such gain is due to the petitioner's work. While the petitioner's references claim that her shows have been well received, the advertisements for the petitioner's shows and the articles about her are all in Chinese-language publications. The record contains no reviews of her work or exhibitions in major media. In addition, her exhibitions have all been at Asian-related functions.

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

The petitioner has displayed her work at the Shu Er Xuan Grand Exhibition Competition, the Hong Kong Special Art Cup Exhibition Competition, the 5<sup>th</sup> Singapore Chinese Art Exhibition, the 1999 Asia Expo, the United Nations Building in New York, and the gallery of the Amerasia Bank in New York to which the petitioner donated one of her works. The director requested evidence regarding the significance of these exhibitions. As noted by the director in his final decision, the petitioner's response did not address this issue.

On appeal, the petitioner submits a letter from the United Nations Book Club indicating that the United Nations has invited many famous artists from around the world to exhibit their work at the U.N., bringing different art styles from around the world to the U.N. The letter asserts that the petitioner's exhibition was the "first of its kind ever shown" at the U.N. The U.N. exhibit certainly goes beyond the rented galleries inherent to the field of art for selling one's work. Nevertheless, the evidence for each criterion must be evaluated in light of the statutory requirement for "extensive documentation" and as to whether the evidence demonstrates sustained national or international acclaim. A single exhibit with some significance cannot serve to meet this criterion.

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

Regarding this criterion, counsel refers to the petitioner's title as "Folk Industrial Artist" given by the U.N. Education Scientific and Cultural Organization, her title as "Contemporary Painting and Calligraphy Artist" by the Canadian World Painting and Calligraphy Artist Association, and reference letters ranking the petitioner as one of the top embroidery artists. Honorary titles are not evidence of playing a leading or critical role for the issuing organization or establishment. The record contains no evidence that the petitioner worked or otherwise performed services for either the U.N. Education Scientific or Cultural Organization or the Canadian World Painting and Calligraphy Artist Association. As such, she cannot claim that she performed a leading or critical role for either organization. Finally, recommendation letters containing general praise are not evidence of the petitioner's role for any specific organization or establishment. The director concluded that the petitioner had not established this criterion in his request for additional documentation and in his final decision. Counsel does not contest this conclusion.

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

Counsel asserts that the petitioner earns RMB100,000 for her work as a senior technician for the Department of Art and Craft Products, which is well above the average salary of RMB 20,000 to RMB 50,000 earned by embroidery artists in China. The petitioner submitted a letter from the Shanghai Jia Feng Special Art Corporation confirming her salary as their senior technician and general manager but no evidence to support the average salaries of embroidery artists. Regardless, a comparison between the petitioner's salary as a senior technician and general manager with the average salary of embroidery artists is not persuasive. The petitioner must demonstrate that her remuneration as an artist ranks with other highly compensated artists, not merely that she earns more as a general manager than the average artist does. The record contains no evidence regarding the range of prices for hair embroidered art or receipts reflecting the past sales prices of the petitioner's work.

Finally, the petitioner submitted several references from other artists, including some with impressive reputations. These references rank the petitioner at the top of her field. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

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.