

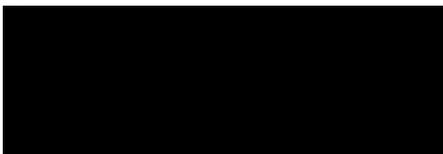


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U.S. Department of Justice
Immigration and Naturalization Service

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



04 NOV 2002

File: [Redacted] Office: Vermont 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)

PUBLIC COPY

IN BEHALF OF PETITIONER:
[Redacted]

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 sustained and the petition will be approved.

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, counsel summarizes the evidence submitted initially and notes several questionable statements of law by the director.

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.

In his decision, the director stated that meeting “some of the criteria” and even “sustained national acclaim” is insufficient to demonstrate extraordinary ability. While we do not find these statements to be evidence of bias, as suggested by counsel, we do agree that these statements are problematic. While the evidence submitted for each criterion must be evaluated as to whether it reflects national acclaim, once a petitioner demonstrates that he meets at least three criteria, he has essentially established his eligibility provided he has established his intent to continue in his area of expertise. The director also states that the petitioner has not submitted evidence establishing the caliber of other members of the field. The director appears to be imposing a burden on the petitioner not found in the law or regulations.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a photographer. 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. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary 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 evidence of several regional awards, all in Inner Mongolia. These regional awards in a single region of China cannot serve to meet this criterion. In addition, the petitioner submitted evidence that his work received recognition below third prize at other national competitions. This recognition cannot serve to meet this criterion; however, as will be discussed below, this recognition did result in the petitioner's work being included in touring exhibitions.

More significantly, however, the petitioner submitted evidence of other national awards. Specifically, the petitioner submitted a 1992 certificate of award for Mention of Gold Image Prize issued by the Chinese Photographers Association. The petitioner submitted an affidavit from the Chinese Photographers Association asserting that the Gold Image Prize and Mention of Gold Image Prize, initiated in 1988 and awarded every four years, are the highest national awards for photography in China. The affidavit continues that there were 10 winners for each award in 1992 and that the ceremony in Beijing was “heavily covered” by the national media. The affidavit does not explain the difference between the two awards. An article published in *China Photography* indicates that the Gold Image Prize is the highest prize but that the judges “are of the opinion that the Mention of Gold Image Prize is of the same importance as the Gold Image Prize.” The article continues that the judges “hope that the organization committee and press will pay more attention to the Mention of Gold Image Prize.”

In addition, Ma Zhitao, retired director of the Photography Department of the Huhhot Evening Press, asserts that in 1988 the petitioner won one of five silver prizes awarded in the National “Evening Press” Photographic Competition in which more than 1600 photographers from 28

provinces competed. While the petitioner appears to have submitted the award itself, the record does not contain a certified translation of the award certificate.

Further, the petitioner submitted 1993 and 1995 certificates for having “successfully achieved outstanding results in the ‘FujiFilm Cup’ China Ten Best Photo Contest” sponsored by the Shenzhen Photographic Association and Fuji Photo Products. Gao Dongfeng, a fellow photographer in Inner Mongolia, asserts that this competition is nationally significant, with 3,000 photographers submitting photographs and the winning photographs displayed in a touring exhibit.

The petitioner also received several awards, including silver and gold awards, at several of the biannual “Along the Great River” exhibitions sponsored by the Bureau of Social Culture of the Ministry of Culture. An affidavit from the China Artistic Photography Society asserts that the contest receives thousands of entries, 270 of which are displayed, 37 of which receive awards. The affidavit further asserts that the event receives national media coverage.

The record also includes awards from other national competitions alleged to be of significance.

Despite the numerous awards issued to the petitioner, the director concluded, without further discussion, “the record lacks sufficient national/international recognition through published and/or televised media identifying significant awards in the field.” This dismissal of the petitioner’s numerous awards without further discussion is troubling. While evidence of media attention is useful in determining the significance of an award, we do not find that the lack of such evidence is cause for dismissing all awards issued to the petitioner. We note that the request for additional evidence does not specifically request media coverage *of the petitioner’s awards*.

While some of the allegations of the significance of the above awards are not supported, such as the claims that these awards are “heavily covered” in the media, the record as a whole confirms that the awards do serve to meet this criterion. In addition to the Mention of Golden Image, the petitioner has won several national competitions which, while not demonstrated to be individually significant, were sponsored by several different regions within China. Thus, as a whole, the petitioner’s history of awards serves to meet 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 has submitted evidence related to this criterion. As discussed below, the record contains satisfactory evidence for at least three other criteria. Therefore, we need not determine whether the petitioner’s memberships in various Inner Mongolian and Chinese societies meet this 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.

The petitioner submitted evidence that he was included in *Who's Who, World Famous Artists*, the *Chinese Photographers Dictionary*, the *Chinese Artists Biography Collection* and the *World Personage Dictionary*. Appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim. In addition, the record includes lengthy articles about the petitioner published in the *Huhhot Evening Paper* and the *Inner Mongolian Daily*, local publications based in the petitioner's home province. The petitioner also submitted a review in *China Photography* of the China Scenery Photographic Works Invitational Exhibition and the China Tide Photographic News Gathering Visit in which the petitioner participated. These articles are not primarily about the petitioner.

The petitioner, however, also submitted two brief articles specifically about him in *China Photography* and longer articles about himself in *People's Photography* and *China Talent*. In addition, the petitioner submitted an article about himself in the overseas edition of the *People's Daily*.

We also note that in 1998, the China Photographic Publishing House published a collection of 80 of the petitioner's photographs entitled *The North of China*. The record suggests that this book was a commercially available, significant publication. The petitioner's photographs also appeared in several Chinese journals, including the in-flight magazine for China's official airline and several books.

The director failed to discuss any of the above evidence. We find that the articles in national journals and the *People's Daily* in addition to the commercially available books which feature the petitioner's work are more than sufficient to meet this criterion.

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 submitted a certificate from the Department of Personnel and Education of the Bureau of Culture of Inner Mongolia verifying the petitioner's membership in the Qualification Committee for Senior Professional Titles in Popular Culture of Inner Mongolia from 1995 to 2000. In addition, the petitioner submitted an affidavit from the Inner Mongolia Photographers Association indicating that the petitioner was a member of two regional judging committees: for the Gold Eagle Award in 1998 and for the election of ten photographers with outstanding achievement from 1994 to 1999. The China Artistic Photography Society confirms that the petitioner was a member of the judging committee for the national biannual "Along the Great River" exhibition in 2000. The record also contains evidence that the petitioner has reviewed other photographers' work for trade journals.

While the petitioner has repeatedly claimed to meet this criterion, the director failed to address it. We find that the above evidence clearly establishes that the petitioner meets this criterion.

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

The Inner Mongolia Photographers Association asserts that in 1989, the association awarded the petitioner with the "Prize of Outstanding Contribution to Photographic Cause in Inner Mongolia" in recognition of the petitioner's "remarkable achievements in photographic creation." The certificate of honor is in the record. The petitioner also received a certificate of merit from the Famous Figures of the Contemporary Arts Circles in China for "outstanding contributions and remarkable achievements." In addition, the record includes several reference affidavits. We need not discuss this criterion in detail, however, as the petitioner meets at least three other criteria.

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

The petitioner submitted a letter from Hou Qinqing, director of the Photographic Department at *China Culture*, asserting that the petitioner's photographs have appeared in *China Culture* and that the petitioner is a photographic correspondent for the journal. In addition, the petitioner submitted an unsigned letter asserting that the petitioner's photographs and commentaries have appeared in *China Photography*. News stories and commentaries are not scholarly articles. We find that the petitioner does not meet this criterion.

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

The petitioner submitted an affidavit from the China Artistic Photography Society verifying that the petitioner's work "Erjina" was selected for exhibition in the 1990 "First Ten Provinces Minority Nations Photographic Exhibition of Sight and Culture" which toured the ten provinces represented. The 200 photographs exhibited were selected from 10,000 photographs submitted by 500 photographers. The affidavit asserts that the tour was "heavily covered" in the national media. In support of this affidavit, the petitioner submitted the 1990 certificate of acceptance. As stated above, the petitioner's photographs won prizes in the Fuji Cup, Huamei Cup, Shishi Cup, and Nikon Photo Contest Award competitions and were displayed in touring exhibits. The petitioner also submitted certificates from the China Artistic Photography Society verifying that the petitioner's photographs won the Gold Prize and Excellent Prize at the Fourth Artistic Photography Exhibit in 1998, the Excellent Prize in the Third Artistic Photography Exhibit in 1995, the Silver Prize at the Second Artistic Photography Exhibit in 1993, and the Excellent Prize in a 1990 photography exhibit. The petitioner also submitted a certificate of acceptance for "red desert" to be displayed at the 6th International Photographic Art Exhibition in 1992. The petitioner's work was also accepted for display at the 16th Asian-Pacific Photographic Exhibition in Japan. The record also includes other affidavits and certificates reflecting that the petitioner's work has been displayed at other national exhibitions. An article in the *Huhhot Evening Paper* reported that ten of the petitioner's photographs were featured in a traveling exhibition that toured 51 countries.

Despite this criterion's obvious relevance to the petitioner's field, the director failed to even address it. We find that there is ample evidence 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.

The petitioner submitted a letter of appointment confirming his position as professor of artistic photography and director of the Photo Producing Department at the Orient Film and TV Specialized College. The petitioner also submitted letters regarding his positions with various local and national photography societies. We need not consider whether these positions meet the requirements of this criterion as the petitioner has already met at least three.

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

While the petitioner claims to meet this criterion, we need not address the evidence as the petitioner already meets at least three other criteria.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.