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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: WAC-98-162-52098

Office: California Service Center

Date: NOV 16 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, California Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The Association Commissioner affirmed its decision on motion. The matter is now before the Associate Commissioner on a second 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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserted that the director erred in failing to consider counsel's seven-page letter, focusing on the absence of awards, and "requiring petitioner different from beneficiary." On June 29, 2000, the Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision and dismissed the appeal. The AAO noted the following deficiencies:

1. The "published materials about the alien" did not appear in professional or major trade publications or major media;
2. Evaluating one's students as a college instructor is inherent to the duties of teaching, is not indicative of national acclaim, and cannot serve to meet the criterion relating to judging the work of others;
3. The petitioner failed to establish that his art style had had a significant impact on the field; and
4. The creation of a library banner and outdoor mural in addition to volunteer work at arts fairs and seminars cannot serve to meet the display at artistic exhibitions or showcases criterion. Specifically, the banner and mural were not displayed at exhibitions or showcases and the arts fairs were not at a level to demonstrate national acclaim.

On July 31, 2000, the petitioner filed a motion to reopen, submitting new newspaper articles, reference letters, and evidence of exhibitions.

On December 11, 2001, the AAO affirmed its own decision, noting that the new documentation submitted on motion did not establish the petitioner's acclaim at the time of filing and had the same deficiencies as the initial documentation. Specifically, the new articles were published after the date of filing and did not appear in nationally circulated sections of major newspapers. Moreover, the reference letters did not reflect that the petitioner judged the work of others beyond his duties as a teacher. Further, the new evidence did not reflect that the national or international art community considered the petitioner's new techniques to be a major new movement. Finally, the new exhibition was held after the date of filing and was local in nature.

In the current motion, counsel misstates the AAO's concerns regarding the published material, asserting that the AAO determined that it was insufficient because it was not accompanied by "translation, title, date and author of the material." Counsel further argues that the evaluations by the petitioner's students submitted in support of the current motion demonstrate that he has judged the work of others. Finally, counsel asserts that the petitioner's work has been exhibited internationally, and that the petitioner continues to be covered in the media. The petitioner's 26 new exhibits will be discussed below.

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 he 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 a 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 had originally claimed to have met four of the criteria. The AAO, in its appellate decision and in its decision on the initial motion, concluded that the petitioner had not met any of the criteria. In his current motion, the petitioner

submits new evidence and arguments from counsel in an effort to establish that he has met the four criteria claimed.

*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 its initial decision, the AAO stated:

Many of the "published materials" are documents such as certificates, acknowledging the petitioner's participation in local events. Other documents are programs distributed at arts fairs. These documents are not professional or major trade publications.

Of the actual newspaper and magazine articles submitted, the petitioner has not shown that any derive from major national or international publications. The petitioner cannot derive national acclaim as a result of strictly local media coverage.

With the initial motion, the petitioner submitted three new articles from California newspapers. The AAO concluded that all of these articles were published in early 2000, well after the petition's May 1998 filing date, and cannot retroactively establish that the petitioner was eligible as of that filing date. See Matter of Katighak, 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.

The AAO further noted that even if the articles had existed when the petitioner filed the petition, they could not fulfill this criterion. One article is from the Los Cerritos Community News, which by its very name appears to be a strictly local publication. The subject matter of the articles is also consistent with a local rather than national publication.

A second article appeared in the Press-Telegram. The record contains no evidence that the Press-Telegram is nationally circulated, or that an individual could otherwise become nationally known through articles appearing therein. The AAO noted that the text of the Press-Telegram article is identical to that of the Community News article, and both pieces are obviously based on a Platt College press release (also submitted on motion).

The remaining article was, according to counsel, "[a] report about the alien and his outstanding contribution to the higher education centers, published in the Los Angeles Times, a major prestigious daily publication." The AAO acknowledged that the Los Angeles Times is certainly a well-known and prestigious publication. The AAO, however, expressed concern regarding where this article appeared in the paper. Specifically, the article appears in a section that is clearly labeled as an "advertising supplement." Every one of the articles ends with the telephone number of a local school or college. The AAO concluded that the "article" appears to be a paid advertisement (to promote Platt College-Cerritos) rather than a work of journalistic reportage. There is no indication

that this advertising supplement was distributed nationally, rather than solely in the vicinity of the schools that the advertising supplement promotes. It is common practice for major newspapers to include sections that are distributed only in certain localities, for instance on a county-by-county basis.

Finally, the AAO stated:

The conclusion that the articles are advertisements is consistent with the fact that the Press-Telegram article about the petitioner appeared in the “Classified” section of that paper, and that the Community News article is essentially the same as the Press-Telegram article. All three pieces discuss how some of the petitioner’s art work has been provided to the offices of a local assemblywoman. The Los Angeles Times advertising supplement states that the petitioner “loaned” his work, while the other two articles state that he “donated” the pieces.

Counsel states that the petitioner has documented a “staggering” quantity of publications, and condemns the Service’s “never ending appetite for more and more publications” when “a reasonable prudent examiner would have been satisfied [with the] shower of publications submitted in this manner.” While counsel broadly states that the petitioner’s previous submissions satisfy this criterion, counsel does not address the AAO’s specific findings in that regard.

Counsel does not address the plainly-worded requirement that the publications must be “major.” Counsel’s contention that the sheer quantity of publications is sufficient to establish eligibility is entirely unsupported. The articles submitted on motion fail to show that the petitioner’s work has attracted any attention outside of southern California.

With his current motion, the petitioner submits another Los Angeles Times excerpt from October 2001. The excerpt discusses Platt College’s response to the terrorist attacks of September 11, 2001, noting that the petitioner intended to donate his painting, “The Trinity with the Firefighters” for a charity auction as well as donating copies to relief organizations in New York. The excerpt appears in the paper’s Career Builder Magazine and, as with the previous Times excerpt, concludes with Platt College’s phone number. Thus, it is clear that this excerpt is, in fact, also an advertisement for the petitioner’s employer.

The petitioner also submits an October 18, 2001 Los Cerritos Community News article announcing that the petitioner planned to auction the above-mentioned painting at a Cerritos Chamber of Commerce function.

In addition, the petitioner submitted an undated excerpt in the “News and Notes” section of Orange County Home. The excerpt, entitled “Made in Orange County, Local Artist Uses New Medium,” ends with the petitioner’s phone number and the prices for his paintings. The excerpt does not

include a byline. As such, the excerpt does not appear to be a news article, but a press release or advertisement.

Finally, the petitioner submits the cover and several pages from the October 26, 2001 issue of Tehran, an “international weekly magazine.” Curiously, while counsel erroneously states that the AAO was previously concerned about the lack of translations (all of the previous published materials were in English) the petitioner fails to provide a complete, certified translation of the article in this foreign language publication. Regardless, it was published more than three years after the date of filing.

With the exception of the article in Tehran, the above excerpts all appear in local publications or are advertisements. All but the excerpt in Orange County News, were published after the date of filing. The AAO has already stated that excerpts from local publications are insufficient because they do not contribute to the petitioner’s “acclaim” nationally. In addition, the AAO clearly implied that press releases and advertisements that are not the result of “journalistic reportage” are insufficient. Finally, the AAO has already stated that materials published after the date of filing cannot establish the petitioner’s eligibility at the time of filing. Rather than address these concerns, the petitioner submits additional evidence with the same deficiencies. Evidence that, because of its nature, cannot serve to meet a criterion does not become acceptable simply because there is more of it. The new evidence submitted with the current motion fails to establish the petitioner’s eligibility for the same reasons as the previous evidence failed.

The petitioner also submitted a “media release” announcing that the petitioner was accepted by the National Registry of Who’s Who as a Life Member. While the release concludes that “the media should, in community cooperation, report [the petitioner’s] acceptance,” there is no evidence that any major media did, in fact, report the petitioner’s “acceptance.” In addition, appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory such as Who’s Who is not evidence of national acclaim.

*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.*

In its initial decision, the AAO stated:

Counsel states that the petitioner “has been teaching art at various colleges and universities for the past eight years.” Teaching art does not demonstrate or accrue national or international acclaim. While an art teacher does evaluate the work of his or her pupils, this evaluation is inherent in the process of teaching; it does not elevate some artists or art teachers above others in the field.

Counsel stated in the initial motion that the AAO “has attempted to ignore the petitioner’s prolific work, talent and magnificent artful skill by calling him merely an Art Teacher. This has been ostensibly utilized to minimize his undeniable artistic stature.” Counsel then made several assertions regarding the petitioner’s talent as an artist, and the importance of recognizing such

talent. The AAO concluded that these remarks were off point with regard to whether the petitioner had acted as a judge of the work of others. The AAO noted that, to establish the petitioner's work as a judge, counsel had initially argued that the petitioner had "been teaching art" and in that capacity had judged the work of others.

Regarding a newly submitted teaching certificate submitted with the first motion, the AAO concluded that the document did not establish acclaim or recognition in any discernible sense. Rather, the AAO concluded that it established only that the petitioner is authorized to teach art classes.

Finally, the AAO stated:

Counsel cites several new witness letters and other documents "[i]n support of this category," but counsel offers no explanation as to how any of this evidence establishes that the petitioner has judged the work of others at a level that establishes or demonstrates national or international acclaim. Every one of these documents concerns the petitioner's reputation in the greater Los Angeles area.

With the current motion, the petitioner submits a student course assessment and annual evaluation of the petitioner as a professor/instructor. Once again, the new evidence does not address the AAO's stated concerns. The AAO has never concluded that the petitioner is not an art teacher or that, as a teacher, he does not evaluate his students. The concern expressed by the AAO in both of its previous decisions is that the evaluation of one's students is inherent to the duties of a teacher. The evidence submitted for each criterion must be evaluated as to whether it is indicative of national or international acclaim. We cannot conclude that every teacher, or even college level teacher, has national or international acclaim. The submission of additional evidence that the petitioner is a teacher simply does not address the concerns stated by the AAO, regardless of how well-respected the petitioner is as a teacher by his school and his students.

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

In its appellate decision, the AAO stated:

The petitioner has developed his own style of painting, which he terms "romantic elementism." Counsel asserts that "only a handful of artists in the world . . . have developed a new style and artful technique." Nevertheless, the burden is on the petitioner to show that this new technique is generally recognized as a major contribution. In and of itself, developing a new technique is an original contribution, but it does not assume major importance; its importance is up to the art world, rather than the petitioner, to decide. . . .

The petitioner has not submitted evidence, such as letters from nationally recognized art experts, to show that the petitioner's paintings have had a significant impact on his field. The petitioner has submitted a number of letters from local teachers and others, but these letters

do nothing to establish that the petitioner is known at all outside of Orange County, California.

In the initial motion, counsel stated that the petitioner “has devoted his life to the field of art and education” and “is also a pioneer in the presentation of ‘reliefs.’” The AAO concluded that counsel’s comments do not address or overcome the AAO’s finding that the petitioner has not shown that his work is widely recognized to be of major importance. Section 203(b)(1)(A)(i) of the Act demands “extensive documentation” of sustained acclaim, and counsel’s personal assurances regarding the importance of the petitioner’s work cannot suffice. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Finally, the AAO rejected the petitioner’s personal statement in which he asserts “[i]t is my intention that this kind of art will be able to lead humanity to higher states of being and make us think about ultimate unity.” The AAO stated:

The petitioner’s lofty aspirations are not evidence that his innovations represent original contributions of major significance. There is no evidence that the petitioner’s innovations have led to the founding of a major new movement in art by influencing other artists around the country or the world.

In the current motion, the petitioner submitted new reference letters. [REDACTED], an architectural historian, asserts that he has been familiar with the petitioner’s work since the 1980s. [REDACTED] continues that he has observed the petitioner’s work in “various galleries throughout California,” and that the petitioner “has managed to produce consistently poignant works of art that will no doubt endure the passage of time.” In an unsigned letter, [REDACTED] a research musicologist, asserts that he first met the petitioner while working as a library consultant with Platt College. [REDACTED] indicates that he is impressed with the petitioner’s work and that his work constitutes “important contributions.” Hessam Abrishami, president of the Iranian Fine Art Group and friend of the petitioner’s, asserts that the petitioner has “his own contemporary way of expression.” [REDACTED] also asserts that the petitioner is a “valuable member of the Iranian Fine Art Group of Los Angeles” and that the petitioner is “well-known.” Hilda Baitoo, chairperson of the City of Mission Viejo Cultural Arts Committee, asserts that the petitioner is one of the committee’s prominent members and that he has demonstrated “excellence through his artistic and professional contributions.” [REDACTED] a kitchen and bath consultant in California, asserts that the petitioner is a gifted artist who created murals for her showroom.

The above letters are all from individuals residing in California. The AAO never contested the petitioner’s recognition in Southern California. These letters simply confirm a fact the AAO already acknowledged. None of these letters provide examples of how the petitioner has influenced painters or other artists nationwide or internationally.

The petitioner does provide some letters from individuals outside of California. Zbioreczyk Lucien, an architect in Luxembourg, indicates that he attended the petitioner’s exhibition in Vienna and

provides general praise of the petitioner's work. [REDACTED] a professor with degrees in German literature and art history, asserts that he also saw the petitioner's work exhibited in Vienna in the 1990's as well as at a recent exhibition at the University of California, L.A. campus. Dr. Bassiri concludes, "this new media that [the petitioner] is working with is now very unique and deserves to be recognized." Philippe Emami, an automotive designer residing in France, asserts that he has some of the petitioner's work in his home.

These references, however, are not from top artists acknowledging the petitioner's influence. Only Dr. Bassiri has any relation to the field of art, and a minor in art history is not necessarily sufficient expertise to rate the top artists in a country or in the world. Regardless, Dr. Bassiri states only that the petitioner's style "deserves" to be recognized, not that it, in fact, has been recognized. None of these references provide examples of how the field of art has changed due to the petitioner's unique style.

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

The AAO, in its appellate decision, concluded:

The petitioner has established his participation in local art festivals and projects, such as creating a banner for a public library and a mural outside a local franchise restaurant, but these activities are not of a caliber reserved for only the top, nationally-known artists. While an outside banner or mural is on "display" in the sense that it can be viewed by the public, the form of the display is not an artistic exhibition or showcase. The presence of the petitioner's artwork is incidental to the purpose of the visits by the members of the public.

The petitioner's volunteer work at arts fairs and seminars does not elevate him above the vast majority of artists, as it must to establish eligibility. The petitioner has not satisfied this criterion by showing, for example, that major museums have hosted retrospectives of his work. The visa classification sought is extremely restrictive, and this office cannot conclude that the petitioner satisfies this criterion simply because his art work is visible rather than concealed.

In the initial motion, Counsel offered no response to the above observations. The new evidence submitted under this criterion concerned an Art-A-Fair Festival held in Laguna Beach, California, in the summer of 2000. The AAO reiterated that events which took place in 2000 cannot establish eligibility for a 1998 priority date.

The AAO further stated that the Service's findings regarding the petitioner's initial evidence apply equally to the evidence submitted on motion. The AAO stated:

Purchasing exhibition space at a local art fair is not a rare honor limited to top artists, comparable to a solo show at a nationally-known museum. Absent persuasive evidence that only top, nationally-recognized artists show their work at fairs and festivals, such evidence cannot establish the required level of sustained

acclaim. Judging from the brochure in the record, Art-A-Fair 2000 was intended not to celebrate the work of the petitioner, but to provide local artists a forum to sell their work and raise their local profiles.

On motion, the petitioner submits letters from individuals who viewed his work at exhibitions in Vienna in the 1990's. ██████████ asserts that the petitioner's work was exhibited "in many galleries in Europe." ██████████ however, fails to indicate the nature of these exhibits. As stated above, the AAO not only challenged the location of the exhibits, but also their nature.

The petitioner also submits the program for an exhibition in Las Vegas, Nevada. While this exhibit was outside California, the petitioner failed to submit any evidence regarding the nature of this exhibit. As the AAO has already stated, paying rent for exhibit space to sell one's work is not evidence of national acclaim. Moreover, expanding the petitioner's circle of recognition to a single additional state on the West Coast is not evidence of national acclaim. Finally, the exhibit was in 2000, well after the May 1998 filing date.

The petitioner also provides evidence that he has donated paintings to auctions benefiting charities and charities themselves. The donation of one's work, while laudable, is not evidence of national acclaim in and of itself. The record contains no evidence that charities outside of California and Nevada have sought the petitioner's work for donation based on his national reputation. Moreover, the donations were all after May 1998 when the petition was filed and cannot establish the petitioner's eligibility at the time of filing.

In conclusion, as with the petitioner's initial motion, the newly submitted evidence with the current motion is essentially similar to the evidence submitted previously and found by the AAO to be insufficient to establish eligibility. We reiterate that at no time has the AAO challenged the *amount* of evidence submitted. Rather, the AAO has concluded that the documentation is deficient because it is not indicative of national acclaim. The lack of documentation indicative of national acclaim cannot be cured by the submission of even more documentation indicative of local recognition only. Counsel has addressed few of the AAO's specific findings, and has rebutted none of them. The record establishes that the petitioner is respected locally as a successful artist and art instructor, but there is no evidence of the sustained acclaim at a national or international level which is a fundamental requirement in the statute and regulations.

Finally, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. at 323 (citing *INS v. Abudu*, 485 U.S. at 107-108). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. Any new motion supported solely with documentation of the type already considered by the Service or of accomplishments after the date of filing will not meet the requirements of a motion to reopen and will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. 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 December 11, 2001 is affirmed. The petition is denied.