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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: EAC-01-256-51424 Office: Vermont Service Center

Date: OCT 08 2002

IN RE: Petitioner:
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. 153(b)(1)(A)

IN BEHALF OF PETITIONER:

[Redacted]

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 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.

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).

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. These statements are legally incorrect.

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 an authenticator of Chinese art. 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.

Initially, the petitioner submitted evidence that in the National Bureau of Cultural Relics in China named the petitioner's book, Four Monks of the late Ming: Chien-chiang, Shih-ch'i, Shih-f'ao and Pa-ta-shan-jen, the 1990 Best National Book Award in Fine Arts and that the China Art Academy awarded his paper, "On the Paintings of Chinese Men of Letters" first prize at the Second Symposium on Ancient Chinese Art in 1989. While the petitioner has not established the significance of these awards, they will be considered below as evidence of the significance of the petitioner's publications and contributions to his field.

The petitioner also submitted evidence that Peking University invited the petitioner to be a guest professor in their Department of Art History and that the Exchange Center of Chinese Cultural Relics designated him as a First Class Appraiser. A job offer and a job title, even if competitive, are not awards or prizes.

In light of the above, we concur with the director that the petitioner has not established that he meets this criterion.

On appeal, the petitioner submits evidence that Tokyo University issued the petitioner the Yonemura Prize in 1999 for outstanding achievement in the research of ancient Chinese paintings. The record contains no evidence of the significance of this award.

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 claims to be a member of the China Art Academy but provides no evidence of his membership or the membership requirements of the Academy. As such, he has not established that he meets 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 a magazine cover picturing the petitioner and photographs of a television program on which the petitioner appeared. Counsel asserts that the magazine, Chinese Art News, is a prestigious professional art critic journal edited and printed in Taiwan and circulated worldwide. Counsel further asserts that the photographs are from Chinese Television Channel (CCTV) during its coverage of the 1995 Hong Kong Paintings and Calligraphy Exhibition. Merely appearing on the cover of a magazine is not necessarily evidence of national acclaim. The petitioner has not indicated that the magazine included an article about him. Without additional evidence regarding the focus of the television broadcast, we cannot conclude that his appearance on the broadcast is evidence of national acclaim. Nevertheless, we will consider the television coverage as evidence of the significance of the competitions judged by the petitioner. In light of the above, we concur with the director that the petitioner has not established that he meets 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.

Abraham P. Ho, Senior Appraiser of the Oriental Art Appraisers Association and curator of the Oriental Collection at St. John's University, asserts that the petitioner "has been the appraiser and judge for several national and international exhibitions in China and abroad" and that he was selected "as one of five extremely outstanding appraisers as the judge of the prestigious Chines[e] Painting and Calligraphy Exhibition" in Hong Kong in 1995. The petitioner submitted a letter from the China Jilin Culture Bureau inviting the petitioner to be a member of the evaluation committee of the Jilin Mass Fine Art Works Exhibition and a letter from the China National Youth's Fine Art Committee inviting the petitioner to be a member of the evaluation committee of the China National Chang Bai Shan Young Painters Exhibition. As stated above, the record includes evidence of the petitioner judging the Chinese Painting and Calligraphy Exhibition in Hong Kong in 1995. As the petitioner appears to have judged national competitions with some significance, we conclude that he meets this criterion.

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

The director concluded that the petitioner did not meet this criterion. We disagree. The petitioner has submitted several letters of support from multiple officials at the Smithsonian Freer Gallery (the petitioner's prospective employer), the Metropolitan Museum of Art, and Sotheby's.¹ While these letters mostly provide general praise and discuss the petitioner's contribution to Sotheby's, the extremely prestigious nature of the museums and auction house supporting the petitioner's petition

¹ The director appears to have ignored these letters since he states that the record does not include materials written about the petitioner by independent experts in the field. While this is not a statutory or regulatory requirement, the petitioner did submit such letters.

cannot be simply dismissed. In addition, as will be discussed below, the petitioner has authored several articles and books, some of which have won awards. Given the record as a whole, we conclude that the petitioner meets this criterion.

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

The petitioner submits copies of the cover pages of his books and articles. As stated above, one of the petitioner's books and one of his articles have received awards, reflecting their national significance. The director makes no mention of these publications. Based on these publications and their significance, we conclude that the petitioner meets this criterion.

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

In 1999, the petitioner was appointed tenured appraiser for the Palace Museum of China, also known as the Forbidden City. The same year the petitioner was appointed vice director for the China Cultural Relics Exchange Center. The director makes no mention of these positions. It is not necessary, however, for us to determine whether these were leading or critical roles for establishments with a distinguished reputation as the petitioner has already met three criteria.

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 submitted a letter from Wang Xuezhi, general manager for Beijing Xieli Exhibition Display Equipment Company, who asserts that the petitioner earns twice the average salary for an art appraiser in China. Without any discussion of why this evidence is insufficient, the director concluded that the petitioner did not meet this criterion. We concur because Mr. Xuezhi's assertion is unsupported and one must earn a comparably high salary when compared with other high salaries in the field. Regardless, as discussed above, the petitioner already meets three criteria.

Finally, the director concluded that the petitioner had not established that he would prospectively benefit the United States. It is noted that the petitioner has a job offer from the Smithsonian, one of the premiere museums in the United States. As such, we reject the director's conclusion in this regard.

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. 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.