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U.S. Department of Justice
Immigration and Naturalization Service

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

PUBLIC COPY



25 OCT 2002

File: EAC 00 209 51633 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)

IN BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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. 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 he has sustained national or international acclaim at the very top level.

The petitioner is a painter. The record indicates that the petitioner has primarily resided in the United States since roughly 1993, meaning he had spent between six and seven years in the U.S. as of the petition's June 2000 filing. Whatever acclaim the petitioner may have earned in Korea from the late 1980s through 1993 (when the petitioner's Korean evidence, apart from letters, ceases), such acclaim is not sustained unless the petitioner has continued to achieve national or international acclaim through the work he has done in the United States. If the petitioner's recognition since 1993 is largely limited to one community in the New York area, then he does not have sustained acclaim at a national or international level.

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, counsel 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 submits six documents as evidence of awards. Counsel states that this represents only "a *sample few* of such awards" (emphasis in original), and refers to the petitioner's resume for "a complete listing" of the petitioner's awards. The petitioner's resume represents, in essence, a series of claims rather than documentary evidence, and therefore we will consider only the awards for which the petitioner has submitted actual evidence.

Of the six documents, only two of them refer to actual awards. The petitioner won a "special award" at the 1993 MBC Art Grand Prize Competition and "the Prize of Excellence" at Jung Ang Newspaper's 15th Grand Prize Competition. The other documents are, essentially, certificates showing that the petitioner's work had been selected to appear in national exhibitions. These latter documents are strong evidence of the exhibition of the petitioner's work at a national level, but because such exhibition fulfills a criterion in its own right, we cannot conclude that selection for the exhibition also constitutes an award. We note, for instance, that the Jung Ang exhibition includes prizes (one of which the petitioner won in 1993). We cannot conclude that the very act of competing for one of those prizes, without actually winning (as appears to have been the case at Jung Ang's 13th competition in 1991) represents an "award." Some exhibitions include awards to the best paintings in the exhibition, but there is no evidence that the petitioner's work was singled out from the exhibited works in that way.

Regarding the two documented awards from MBC and Jung Ang, the petitioner has not established the national significance of those awards, both of which were sponsored by media outlets (a broadcasting station and a newspaper). The record does not indicate that the petitioner has won any national or international awards since leaving Korea in 1993. The age of an award is, by itself, not a major disqualifying factor, provided other evidence shows that the petitioner has otherwise remained at the top of his field. When, however, every reliable indicator of acclaim stops several years before the filing of the petition, then it is not unreasonable to conclude that the petitioner's acclaim has not been sustained.

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 Korean Fine Arts Association, but the record contains no evidence to indicate the requirements that one must meet to become a member. Counsel cites other documentation as evidence to satisfy this criterion, but these other documents pertain to art exhibitions rather than memberships in associations.

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.

Counsel asserts that the petitioner "and his artworks have received vast coverage by the media in general," and cites five articles, two from Korean publications, three from New York publications in the Korean language. The record does not indicate that the petitioner has attracted any attention from major English-language publications during his many years of active work in the United States.

The articles in the record consist primarily of reviews. Two of the reviews were published in Korea in 1990 and 1991, respectively. The rest appeared more recently in what counsel says are New York-based publications, all of them in the Korean language. Several of the articles are submitted without translations, because, as counsel states, they are essentially similar in content to other translated articles and so further translations "would have been an exercise in redundancy." The record does not reveal the dates or authors of the untranslated articles, even though such information is required by regulation. The articles are consistent with the overall impression created by the record, specifically that the petitioner had attracted favorable attention in Korea in the early 1990s. Such attention, however, does not appear to have continued after his departure from that country, and the reputation in the U.S. which the petitioner has spent roughly seven years building is largely limited to the local Korean community.

The petitioner submits photographs of the cover and two pages of *Bride* magazine. Counsel states that *Bride* "compiles a list of the **country's most eligible bachelors** on an annual basis," and that the petitioner was listed in the January 1990 issue as one of the seven most eligible bachelors. The fragment of the article that has been translated refers to the petitioner as an "elite" artist who "held his first private exhibition last November," two months before the publication date. The record does not reflect the criteria by which the publishers selected the petitioner as one of the "most eligible bachelors," nor does the record identify the other six selectees to allow for some kind of comparison.

The petitioner submits the 1993 R&B Calendar, which depicts one art work for each month; the petitioner's work decorates the page for April. Counsel asserts that the calendar consists of paintings by "12 of the most influential artists of the time." Like many of counsel's other claims, this assertion is unsubstantiated by any first-hand source. 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).

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

Counsel asserts that the petitioner has satisfied this criterion but does not elaborate, the apparent implication being that the petitioner's overall body of work is of major significance. This relies on the rather circular assumption that the petitioner enjoys acclaim because of the significance of his work, and that his work must be significant because of the acclaim he has earned. Counsel has not shown that

the petitioner has created an influential style of painting, nor does the record single out specific creations by the petitioner that have won major recognition as being especially significant works of art.

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

The petitioner has reviewed art exhibitions for Korean-language publications in New York, but there is no evidence that the petitioner has published anything at the national level. Reviews of art exhibitions do not appear to constitute scholarly articles, which are generally the product of focused research rather than subjective impressions of a given subject.

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

Counsel provides a partial list of group exhibitions in which the petitioner has participated, stating that “[t]o list every single one of these group exhibitions here would amount to a rather silly exercise.” Counsel does not specify how many further exhibitions have been omitted. The petitioner documents two solo shows in Korea (in 1989 and 1991, respectively), three in New York (one in 1997 and two in 1998) and one in Italy (in 1999). The record contains no information to establish the reputations of the venues showing the works. New York has hundreds of art galleries, and we cannot conclude that every artist who has ever sold a painting in New York is among the very top painters in the field, nor can we place a solo show at a small specialty gallery on an equal footing with a touring exhibition limited to major museums such as the Guggenheim Museum or the Museum of Modern Art. Similarly, an exhibition arranged by renting space at an art dealership, for the purpose of selling one’s work, carries less weight than a museum show commemorating an artist’s work, in which paintings are displayed for public viewing but are not offered for sale.

The evidence in the record indicates that the petitioner participated in national exhibitions in Korea, which would satisfy the criterion provided the petitioner has sustained that level of recognition. As we have noted, however, the petitioner’s acclaim as an artist appears to have declined significantly following his departure from Korea and his arrival in the United States in 1993.

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 “has had unparalleled success in having his artworks sold to the general public as well as to the private collections (in United States and Korea).” To support this claim, counsel cites two of the above letters, additional letters from buyers of the petitioner’s work, and a list of the petitioner’s art works available for sale. None of these materials are direct evidence that the petitioner outsells most of his fellow painters either in Korea or in the United States. Indeed, the list of available art works is a list of unsold paintings, rather than evidence of what the petitioner has sold. The satisfaction of individual purchasers is immaterial, because an art collector would seem to be unlikely to spend several thousand dollars on a piece about which he or she is indifferent.

All of the buyers of the petitioner's work appear to be Korean, whether they bought the petitioner's work in Korea before 1993 or in New York thereafter. The letters do not show that the petitioner's works continue to sell in Korea (although some Korean visitors to the U.S. have purchased paintings while in New York), or that the petitioner has sold any work or otherwise achieved a significant reputation in the U.S. outside of the Korean community in New York and New Jersey.

Counsel cites "a famous monthly periodical titled *Monthly Art Market*, which publishes artworks for sale [by] some of the most prominent artists in Korea." Counsel notes that a listing for one of the petitioner's paintings has "the highest price rating." The price rating is only a suggested price; the listing of the painting indicates that, as of the date of publication, the piece had not been sold; there is no indication that it ultimately commanded the recommended price. Because the petitioner has submitted only a small excerpt from the catalog, we cannot compare the price of the petitioner's painting to the prices of other oil paintings of comparable size. Counsel offers no corroboration for the assertion that *Monthly Art Market* is a "famous" publication featuring the work of "some of the most prominent artists in Korea."

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel states that the petitioner's poorly-documented sales satisfy this criterion, notwithstanding the fact that the petitioner does not work in the performing arts. It remains that the record does not contain reliable documentary evidence to show that the petitioner's work outsells that of others in his genre.

Beyond the regulatory criteria, the petitioner submits letters from individuals whom counsel calls "arguably the 4 most prominent and influential artists in Korea today," although the record contains no objective documentation to support this assertion.

Doo Shik Lee states:

I am regarded in my home country (Korea) as one of the best selling painters of all time. In Korea, my artworks are permanently displayed at some of the finest universities and libraries as well as at various public places. . . .

Over the past decade, I have come to regard [the petitioner] as a friend and colleague, and have been enormously impressed by his past and current works of art. . . .

In Korea, based on his years of contribution to the art industry, [the petitioner] is accorded celebrity status. His appearance in the Bride Magazine as one of the most eligible bachelors (he is married today), as well as his inclusion in the prestigious R&B Calendar, speak for themselves. . . . [O]nly a few can parallel [the petitioner's] accomplishments in the art world. . . .

[The petitioner] is clearly one of the few artists who have risen to the top.

The petitioner submits a hardcover book of reproductions of Doo Shik Lee's paintings. The book is identified as part of the "Art Vivant" series. The petitioner does not indicate that his own work has been similarly commemorated.

Two of the witnesses are professors at Hong Ik University, which the petitioner attended from 1981 to 1985 and from 1990 to 1992. The professors also assert that they are co-founders of "Minimal Art." Professor Seung Won Suh states:

Those of us in the world of fine arts hold [the petitioner] in the highest esteem, as one of the few who have reached the uppermost echelons of our field. . . .

[The petitioner] already has made a tremendous impact and we see no signs of slowing down.

Professor Tae-Ho Kim states:

I have had the privilege of personally attending several exhibitions of [the petitioner's] artworks. At each of these exhibitions, there is an unprecedented high volume of turnout which is a true testament to his recognition and influence. And at the conclusion of these exhibitions, the sheer number of paintings sold is nothing short of remarkable.

Without exaggeration, may I state that [the petitioner's] artworks are enormously revered and constantly mimicked, another testament to his place in the art world. His works have definitely made an impact that cannot go unnoticed.

Chong Hyun Ha states:

It is rare . . . to meet an artist who exhibits such a clear understanding of expressionism. . . . One of those rare artists is [the petitioner]. . . .

[The petitioner] has been one of the most sought after artists by the galleries and museums. And no doubt such is the reason for his numerous national accolades awarded in recognition of his excellence in this field.

Though not driven by commercialism, [the petitioner's] artworks are sold at an unmatched pace as soon as his exhibition is completed. . . .

As founder of the Anti-Forum Art Style, I have set trends followed by many. [The petitioner], though, refuses to follow and instead, creates, creates his own magnificence. . . . [H]e is without doubt one of the best in his field.

As with the other letters, Chung Hyun Ha contains much praise but little specific information. The statute calls for "extensive documentation," a requirement reflected in the regulation at 8 C.F.R. 204.5(h)(3) pertaining to a variety of evidentiary criteria. The statements in the above letters require first-hand corroboration to carry any weight.

The director informed the petitioner that the initial submission was not sufficient to establish eligibility. The director specifically noted that the strongest evidence all dates from 1993 or earlier. The director instructed the petitioner to submit additional evidence, showing that the petitioner has earned national or international acclaim and that he has sustained such acclaim in the years following 1993.

In response, counsel asserts that the director should have given greater weight to the four witness letters submitted with the petition. Counsel repeats his assertion that the witnesses are among the "most prominent and influential artists in Korea today," and states "[t]his was NOT an exaggeration." Nevertheless, counsel offers no new evidence to establish the reputations of the witnesses, and counsel cannot corroborate such a claim simply by repeating it emphatically. Even if these individuals, two of whom taught at the school where the petitioner studied, are in fact Korea's top artists, the burden remains on the petitioner to establish that he, himself, enjoys a comparable reputation at a national or international level. We cannot infer acclaim by association.

The letters amount to subjective opinions. None of the letters credits the petitioner with any specific innovation or contribution to his field, and therefore the letters are general endorsements of the petitioner as a talented and original artist.

With regard to the petitioner's career after 1993, counsel states:

[F]rom 1994 to 1997, [the petitioner] focused on **furthering his studies in art** and enrolled in the master's program at New York University. In 1997, he was awarded an *M.A. in Studio Art and Environmental Art* . . .

Incidentally, for the past 10 to 15 years, it has been the norm for many of the most accomplished artists from Korea to further their studies in the United States, and then resuming their art careers. . . .

Resuming in 1997, [the petitioner] continued his career as an artist by holding art exhibitions. . . .

Today (December 2000), [the petitioner's] artworks are being displayed at the famous *Gallery Korea* in New York City. As is always the case, [the petitioner] was **invited** by *Gallery Korea* to exhibit his art works and such invitations are extended only to those artists in the top of their fields.

Counsel's assertion that the petitioner's interruption of his career to pursue a master's degree is "the norm for many of the most accomplished artists from Korea" is entirely unsubstantiated, and even then it does not in any way imply that only "the most accomplished artists" study in the United States. Graduate study is not intrinsically a hallmark of sustained acclaim.

The petitioner submits documentation regarding the November-December 2000 exhibition at Gallery Korea (in which the petitioner was one of six artists). Nothing in this documentation shows that Gallery Korea only accepts works from the top artists. All of the media coverage of this exhibition is,

like the petitioner's earlier U.S. media coverage, restricted to the local New York area, and all of the print articles submitted are in Korean. The petitioner submits a press release from Gallery Korea, announcing the exhibition, but the record contains no evidence that any major newspaper or magazine used the press release in an article.

We note also that the Gallery Korea exhibition did not take place until after the filing date (indeed, it began two months after the director issued the request for further evidence). If the petitioner was not already eligible before this exhibition, then this event cannot establish eligibility. See Matter of Katigbak, 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 director denied the petition, reiterating that the petitioner's acclaim appears to have diminished significantly after 1993; "his period of receiving awards for his work has passed." The director noted that, while some of the petitioner's works cost "several thousands of dollars," those prices are not comparable to works by "world-famous artists such as Rembrandt, Picasso, or van Gogh."

On appeal, counsel states that the director "failed to accord proper weight, if any at all, to the supporting documentation, and incredulously compared the artist (my client) to Picasso, van Gogh, and Rembrandt." With regard to these legendary artists, counsel states that it is simply unfair to expect other artists to meet comparable standards. Nevertheless, the director was not attempting a general comparison between those artists and the petitioner. Instead, the comparison was expressly limited to the issue of selling prices. Given that classic works by, for instance, van Gogh sell for millions of dollars, the eight thousand dollar price of one of the petitioner's works does not make the petitioner's painting one of the most expensive art works on the market.

Certainly, an artist can qualify as an alien of extraordinary ability without commanding millions of dollars for a single painting. Nevertheless, the director made the valid point that the "price tag" of this petitioner's unsold works is not an indicator of acclaim. If the petitioner claims to satisfy 8 C.F.R. 204.5(h)(3)(ix), pertaining to high remuneration in relation to others in the field, then the burden is on the petitioner to show his works actually sell for higher prices than those commanded for works of comparable scale by other artists. Vague and unsubstantiated assertions to the effect that the petitioner sells more paintings than other artists cannot suffice in this regard, nor can unrealized asking prices for unsold works. Letters from selected buyers do not establish any meaningful pattern.

With respect to the petitioner's acclaim after his 1993 arrival in the United States, counsel states that the petitioner "has been legally in the United States, continuing his illustrious art career." The director did not question the petitioner's legal status, or his continued work as an artist. It remains that all of the petitioner's prizes and national exhibitions took place no later than 1993, and virtually everything in the record from after 1993 suggests a reputation limited to the Korean community in the New York metropolitan area.

Counsel's appeal brief consists primarily of unsupported arguments regarding previously-submitted evidence. Counsel attempts to explain various deficiencies in the record with unsubstantiated declarations about how prominent artists conduct their business. For example, with regard to the

petitioner's lack of recent awards, counsel states "many of the world's prominent artists, after a certain period, focus solely on creating artworks and holding art exhibitions, and simply do not enter contests for awards purposes . . . [after] their formative years as professional artists." It remains that a single explanation, the petitioner's lack of national acclaim, also accounts for all of these same discrepancies. For all of counsel's declarations about "the world's prominent artists," those same artists are the subject of anthology books, retrospective exhibits at museums, and major media coverage, with their works sometimes commanding impressive sums at auction because of national or international demand for their work. Counsel states that the director unfairly ignored or discounted the evidence pertaining to the petitioner's "impressive 15-year career," but counsel does not overcome the director's valid observation that the second half of that career has been virtually devoid of acclaim and recognition. We cannot ignore the statutory requirement that acclaim must be sustained.

The regulations plainly spell out the documentary requirements that must be met to establish sustained acclaim, and unsubstantiated claims about the behavior of prominent artists cannot compensate for the absence of the necessary documentation. Even if, for instance, prominent Korean artists often interrupt their careers to study in the U.S., and stop competing for prizes after their "formative years," it does not follow that the petitioner's graduate studies and lack of recent prizes are proof of sustained acclaim. The most reasonable conclusion to be drawn from the evidence (i.e., the conclusion requiring the fewest unproven assumptions) is that the petitioner's reputation is, at this point, almost entirely local in nature.

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 himself as an artist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.