



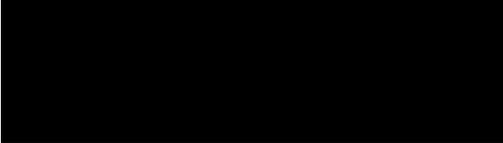
BA

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



File: EAC 02 041 51879 Office: Vermont Service Center

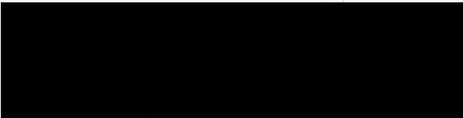
Date: OCT 29 2002

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

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 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 petitioner has submitted evidence that, counsel claims, satisfies several of the lesser regulatory criteria under 8 C.F.R. 204.5(h)(3). The petitioner's evidence includes, but is not limited to, the following: a certificate reflecting the petitioner's receipt of a Bronze Award at the "Exhibition of Finest Chinese Paintings and Oil Paintings" sponsored by the China Central Television Station and the China Artists Association, certificates from the China Artists Association confirming that the petitioner's work was selected for several national art exhibitions, evidence that one of the petitioner's paintings was selected for exhibition in India, three letters asserting that the petitioner served as a judge of other artists, evidence of the petitioner's membership in the China Artists Association, letters from various witnesses attesting to the petitioner's artistic achievements, three articles authored by the petitioner, published materials

about the petitioner accompanied by incomplete translations, and documentary evidence of remuneration for the petitioner's artwork.

The director's decision, in addressing the evidence provided by the petitioner, merely stated: "While the [petitioner], no doubt, is a very gifted artist with some local notoriety, the evidence does not establish the beneficiary to be one of the very top artists in the filed [sic] today." Some of the evidence contained in the record, however, supports counsel's contention that the petitioner's notoriety extends beyond the "local" realm. The director's decision failed to address this evidence and did not offer a meaningful discussion of the petitioner's deficiencies as they relate to the pertinent regulatory criteria.

In this case, the petitioner claims eligibility under eight of the ten lesser criteria set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). While not all of the petitioner's evidence carries the weight imputed to it by counsel, the director's decision has failed to specify clearly the strengths and weaknesses of the evidence as it relates to the eight criteria the petitioner seeks to satisfy. The resulting decision is so vague that it does not present the petitioner with an opportunity to mount a meaningful rebuttal on appeal. Therefore, we conclude that the best course of action is to remand this matter for further action in order for the director to properly address the petitioner's evidence under the pertinent regulatory criteria set forth at 8 C.F.R. 204.5(h)(3).

Accordingly, this matter will be remanded for the purpose of a new decision. If the director again denies the petition, the decision shall set forth specific deficiencies in the evidence upon which the denial is based in order to afford the petitioner an opportunity for a meaningful rebuttal.

**ORDER:** The director's decision is withdrawn. The matter is remanded for further consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.