

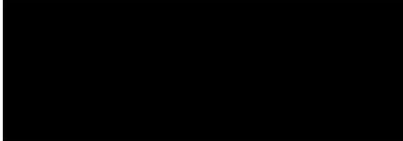


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-01-142-51829 Office: Vermont Service Center Date: 17 SEP 2002

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: SELF-REPRESENTED

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

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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). 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 an iconographer. 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, he 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 submitted a 1985 certificate issued by the City of Struga to the petitioner "for achieving special results in contributing toward the City of Struga's Development." The petitioner also submitted several certificates of participation and appreciation issued to the petitioner for his participation as a "scenographer" in the Falk Costume Shows in Struga.

The director concluded that the petitioner had not established that these "awards" were based on competition with other artists at a national level.

On appeal, the petitioner asserts:

These awards were in fact of extreme importance and renown in my country of Macedonia. As Struga is the main city of Macedonia, any competitions or awards are obviously of national renown.

Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). We do not agree that every competition in a major city necessarily implies that the competition is open to competitors nationwide and evidence of national acclaim. The petitioner has provided no evidence of media coverage of the award or other evidence of its significance. Moreover, certificates of appreciation from the mayor of a city or for participation in a fashion show are not nationally recognized awards.

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.

Initially, the petitioner submitted a letter from the New Jersey church where he worships and plans to work restoring art. On appeal, the petitioner asserts that this "membership" is sufficient to meet this criterion.

A church is a religious organization. There is no evidence that this particular church is a church exclusively for artists who have demonstrated outstanding achievements as judged by recognized national or international art experts. That the petitioner regularly attends church is not evidence of his national acclaim as an artist. Moreover, that the church is willing to hire the petitioner in his field is not evidence of membership in an exclusive art association.

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.

On appeal, the petitioner refers to a brochure and a 1999 calendar "published" by the Orthodox Church. These items are not in the record. Regardless, a Church issued brochure and calendar are not major media. The record contains no evidence that the petitioner has enjoyed any press coverage for his work.

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

In response to the director's request for additional documentation, the individual who prepared the petition, Vernon Dutton, asserted that the certificates of participation referenced above and a reference letter constitute evidence that the petitioner has made contributions of major significance to his field. Certificates of appreciation for participation as a "scenographer" for a fashion show is not evidence that the petitioner has made a contribution of major significance to the field of "scenography." Specifically, they are not evidence that the petitioner set a new standard in this field or otherwise influenced "scenographers" nationally.

In his letter, [REDACTED] director of the National Museum in Struga, writes:

As our associate, [the petitioner] participated in teams that performed archeological researches in the vicinity of the city, underwater, Neolithic archeological location Vrbnik, as well as at the archeological sites St. Martinija Tasmorunista and St. Nikola Oktisi.

[The petitioner] participated in the process of conservation-restoration of the mosaic at the early Christian basilicas Radolista and Oktisi and also in the restoration of the frescoes in the medieval churches St. Atanasije, St. Arhangel Mighail and St. Georgi in Struga.

The director concluded that the petitioner had failed to submit evidence that the above evidence reflected a contribution of major significance. On appeal, the petitioner asserts that his work must be extraordinary to be selected for restoration of high value religious items and that it represents a contribution "to the Orthodox Church (field)."

A place of worship is not a "field" of expertise. Even if we considered the petitioner's work to be a contribution to the Orthodox Church, the Church's only relationship to the art is that of owner or exhibitor. As a theological organization which happens to own art, the "Church" is not the petitioner's field of expertise. The petitioner is not a theologian, rather he is an artist. As such, he must demonstrate a contribution to the field of art, not simply that he has "contributed" to the Church by restoring art with religious significance.

The letter from [REDACTED] simply confirms that the petitioner was a member of a team which restored art items at archeological sites and churches. This letter does not indicate that the petitioner has made a contribution of major significance to the field of art restoration. Specifically,

the petitioner has not demonstrated that he developed a new artistic or restoration technique, set a new standard in art restoration, or otherwise influenced the field of art nationally.

Finally, that the petitioner was able to work in his field, art restoration, is not evidence that he has contributed to the field. Art that is not valuable or important is rarely restored. As such, restoring valuable and important art is inherent to the petitioner's field and, in and of itself, is not evidence of his national acclaim or contribution to the field.

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

The petitioner submitted pamphlets for three exhibitions. The pamphlet for the 1996 exhibition at the Stobi Gallery in Skopje lists eight prior individual exhibitions under the petitioner's name. The director concluded that this was "acceptable evidence." We note, however, that exhibitions are inherent to the field of art. Evidence submitted for each criterion must be evaluated as to whether it demonstrates national or international acclaim. Without evidence regarding the significance of these exhibitions, we cannot conclude that they are evidence of national acclaim.

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

On appeal, the petitioner asserts that he meets this criterion through his work for the Orthodox Church, preserving "their most treasured artifacts."

While we do not question the prestige of the Orthodox Church, it is not clear that the petitioner, a member of a restoration team, played a leading or critical role for the entire Church as a whole. The record does not even establish that the petitioner played a leading role within the restoration team.

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 iconographer 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 indicates that the petitioner shows talent as a iconographer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.