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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

17 SEP 2002

File: EAC-01-179-54083 Office: Vermont Service Center Date:

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. 1153(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 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 stated, "while the evidence shows you are a gifted artist with some local notoriety, the evidence does not show that you are one of the top fine artist[s] in the world today."

On appeal, counsel asserts that the director "overlooked our evidence and denied the petition without giving any specific reason(s)."

While the director's decision lacks a discussion of the evidence, we concur with the ultimate conclusion for the reasons discussed below. We further note that while the director stated that the petitioner had not established that he was one of the top artists in the "world," a level not required by the law or regulations, the director did state that the petitioner had only "local" notoriety. While poorly articulated, we understand "local" to mean less than national. As such, we find that the director applied the correct standard and concur with his conclusion.

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 an artist. 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 that, 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.

Initially, counsel asserted that the petitioner has won "many major awards" and lists the two "most important." Specifically, counsel asserted that in 1993, the Ministry of Culture in China certified the petitioner as one of six Outstanding Artists. The petitioner submitted this certificate.

Counsel further asserted that the petitioner won the International Outstanding Chinese Artists Award (Golden Award) in 1997. Wang Shi, Vice Chairman of the China Artists Association also asserts that the petitioner won this award. The award itself, however, is not in the record.

In response to the director's request for additional documentation, the petitioner submitted a certificate from the Global Artist League awarding the petitioner first prize at the second International Oil Painting Exhibition on November 29, 2001. An accompanying letter from the League asserts that more than 200 artists from 15 countries competed and two first prize awards were issued. Simply because artists from more than one country compete does not make an award internationally or even nationally recognized. The petitioner has not submitted any press coverage of the event or other evidence of the reputation of this award. Regardless, the award was issued after the date of filing and is not evidence of the petitioner's eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

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.

Initially, the petitioner submitted an April 1, 2001 article published in the *Liberty Times*, a Chinese-American newspaper in New York, and two 1997 articles in *Tian Tian Daily*, a Chinese-American newspaper in California. A publication that appears in a language that most of the population in the country where it is circulated cannot comprehend cannot be considered major media. In response to the director's October 2001 request for additional documentation, the petitioner submitted a November 2001 article in *U.S. Digest Magazine*, which, according to counsel, is a New York based influential Chinese magazine with worldwide circulation. The petitioner also submitted a November 2001 article in the *Asian American Times*. While the petitioner has not established that

either publication constitutes major media, both articles were published after the date of filing and are not evidence of the petitioner's eligibility at the time of filing. The petitioner has not submitted any evidence of major media coverage in China. Moreover, the petitioner has resided in the United States since January 1997, more than four years before the date of filing. The petitioner has not submitted evidence of sustained acclaim up until the date of filing by submitting evidence of *major* media coverage in the United States.

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.

Initially, counsel asserted that the petitioner had served as Art Editor for Asian-Pacific Economics, a Hong Kong magazine; organizer for the "1997 Art Exhibition in celebration of Hong Kong's Reunion to China," presented by the American Yanhuang Artists Association (AYHAA) and as Secretary General for AYHAA where he evaluated the credentials of applicants for membership as well as standing board members. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). While the articles in the Chinese-American newspapers state that the petitioner has served as Art Editor and Secretary General, the record contains no evidence that he organized the 1997 exhibition. The petitioner has not established that the Chinese-American newspapers have first hand knowledge of his positions with the Hong Kong magazine or AYHAA. The record contains no confirmation of the petitioner's position or duties as Art Editor from the Hong Kong magazine itself. While the record does contain a letter from the President of AYHAA, he makes no mention of the petitioner's position as Secretary General or as having organized the 1997 exhibition. The record contains little evidence regarding the significance of AYHAA. As such, any positions he may have held with that organization are not evidence of national acclaim.

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

Initially, counsel asserted that the petitioner had exhibited his paintings on a worldwide scale and lists exhibitions in Lanzhou, Shenzhen, Guangdong, Hong Kong, and the United States. As stated above, the assertions of counsel do not constitute evidence. Jian Fan, Vice Chairman of the Chinese Artists Association, asserts that the petitioner has exhibited his work "worldwide." Exhibiting one's work is inherent to the art profession. Without evidence of specific exhibitions and their significance, we are unable to determine whether any of these exhibitions are evidence of national or international acclaim. The only evidence of a specific exhibition is a 1997 newspaper article reflecting that the petitioner's work was on display in Los Angeles China Town at the "Art Exhibition of Calligraphy and Paintings in Celebration of Hong Kong's reunion to China" organized by AYHAA. This single exhibition is insufficient 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.

Initially, counsel asserted that the petitioner has served as Secretary General for AYHAA. Counsel continued:

> AYHAA is the most prestigious art association for Chinese Americans in the United States. As attached articles indicated, AYHAA has, among other thing[s], hosted many important art exhibition[s] and sponsored many artists.

As stated above, the assertions of counsel are not evidence. The petitioner submitted a letter from the President of AYHAA who asserts that AYHAA "is a nationwide association in the United States, which is comprised an [sic] outstanding artists of Chinese origin," but makes no mention of the petitioner's membership in AYHAA or his alleged position as Secretary General.

In response to the director's request for additional documentation, the petitioner submitted a letter from Gu Fei, Secretary of the Chinese American Painters Associates, Inc. asserting that the petitioner was elected as president of the Association starting December 2001. The record contains little evidence other than Mr. Fei's own assertions regarding the reputation of this Association. Regardless, as the petitioner had not served as president for this Association at the time of filing, this letter cannot be considered evidence of the petitioner's eligibility at the time of filing.

Other Evidence

The petitioner also submitted reference letters from other Chinese artists. In so far as the writers address the regulatory criteria, they have been addressed above. Mostly, however, these letters simply provide praise of the petitioner's talents. The ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

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 indicates that the petitioner shows talent as an artist, 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.