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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.
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Washington, D.C. 20536



File: EAC-01-019-52775

Office: Vermont Service Center

Date: 27 SEP 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: SELF-REPRESENTED

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 determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner raises several concerns regarding the director's decision with which we agree. Nevertheless, for the reasons discussed below, we concur with the director's ultimate 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

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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 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.

On appeal, the petitioner asserts that the director found that the petitioner met at least three of the criteria but still did not demonstrate his eligibility. The director stated:

Pursuant to Section 203(b)(1)(A)(i) of the Act, "extensive documentation" is required to establish extraordinary ability. In view of this statutory language, the Service developed the above list in order to provide some guidance for compliance. The list is only a representative selection and does not replace the statutory requirement of extensive documentation to demonstrate sustained national or international acclaim.

Accordingly, the fact that the beneficiary meets some of the above criteria as an Artist does not, by itself, establish that he has achieved a level of extraordinary ability.

While we may not agree with the exact wording of the above statements, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director's decision is that the petitioner submitted documentation that related to or addressed some criteria, but that the evidence itself did not demonstrate national or international acclaim. In fact, later in the director's decision, he discussed, albeit briefly, several of the criteria concluding that the petitioner had not met those criteria. We concur that a petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim.

The director further stated that sustained national acclaim is insufficient to establish eligibility for this classification. The director then noted that the petitioner had failed to submit evidence "establishing the caliber of professionals" in his field with which to compare the petitioner. We strongly disagree with these assertions. The regulations do not allow the director to adjudicate petitions in this classification based on a subjective comparison of the petitioner with others in his field. Rather, the regulations set forth 10 objective criteria, three of which must be met. Once three of the criteria are met with extensive evidence reflecting national or international acclaim, the petitioner has met his burden.¹ Thus, we find these conclusions in the director's decision to be errors of law. Nevertheless, the director did conclude that the petitioner did not meet any of

¹ The petitioner must also establish that he seeks to enter the United States to continue working in his field of expertise. Finally, while the petitioner must also establish that his presence will prospectively benefit the United States, this is not a particularly difficult burden for aliens who truly exhibit extraordinary ability.

the criteria. Since we uphold that conclusion for the reasons discussed below, the director's additional language discussing requirements not found in the regulations does not appear to be reversible error.

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.

The director concluded that the petitioner had not submitted sufficient evidence of national or international acclaim through awards. On appeal, the petitioner asserts that he has won "several important international competitions."

Harry Nasse, director of the Ward-Nasse Gallery asserts that the petitioner earned the "Engraving of the Month" award. The letter, written after the date of filing, does not indicate when the petitioner won this award. Awards earned after the date of filing cannot establish the petitioner's eligibility at that time. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, Mr. Nasse does not indicate who issued the award, who was eligible to compete for the award, or its significance. A local gallery award is not a nationally recognized award.

The petitioner also won the "Award for Contemporary Art" at the "Mystic and Reality" competition. A letter from Dr. Kanev asserts that this competition is an annual international event with a top award of \$1,000, which the petitioner won. First, the petitioner won this award on June 2, 2001, after the date of filing. Second, Dr. Kanev's personal assertions regarding the significance of his own funded award is insufficient. The record contains no evidence regarding the number of competitors, how the works were accepted for competition, how the works were judged, media coverage generated by the event, etc. As such, we cannot conclude that this is a nationally recognized award.

On December 7, 2000, after the date of filing, the petitioner won a juried competition in the field of paper work from the "100 na 100" gallery in Sofia. Again, this award is not evidence of the petitioner's eligibility at the time of filing. Moreover, while an accompanying letter asserts that the competition is for Bulgarian artists operating inside and out of Bulgaria, the petitioner has not established that this is a nationally recognized award. For example, as with the above award, the record contains no evidence of media coverage of this award.

In March 2001, also after the date of filing, the petitioner won the award for illustration in mix-media from Compoart, a design company. There is no evidence indicating that this award from a private company is nationally recognized. Moreover, as with the above award, this award is not evidence of the petitioner's eligibility at the time of filing.

Finally, the petitioner submits a list of awards in the U.S. and Canada alleged by the petitioner to be comparable to those he won. The petitioner's personal assessment that his awards are comparable to the U.S. and Canadian awards highlighted in the submitted list is not persuasive. Moreover, the

record contains no evidence that these U.S. and Canadian awards, while open to artists from all over the nation, are nationally recognized as prestigious.

In light of the above, we concur with the director that the petitioner has not established that he met this criterion as of the date of filing.

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 director did not address this criterion in his decision and the petitioner does not reiterate his claim to meet this criterion on appeal. Nevertheless, we will review the evidence.

Robert H. Blackburn, Founder of the Printmaking Workshop, certifies that the petitioner has been a member of that Workshop since October 1999. Accompanying materials about the Workshop provide:

Incorporated in 1971 as a non-profit organization, it provides a printmaking studio for work in lithography, etching, relief, and photo processes. The Workshop currently serves as a low cost facility for the production of fine art prints and as an environment where artists of different disciplines, backgrounds, cultures, ages and levels of experience can exchange ideas, technical information and approaches to art. Artistic exploration, experimentation and collaboration in the print medium is encouraged through scholarships and fellowships to artists and printers. The Workshop has opened its studios to hundreds of artists from around the world, many of whom might not otherwise have an opportunity to make prints.

This information does not indicate that the Workshop requires outstanding achievements of its "members" as judged by recognized national or international experts in the field of art. Rather, it appears open to artists of different "levels of experience." Moreover, it appears that the petitioner is an intern at this studio, which is a training position. Even assuming the internship is competitive and the Workshop is prestigious, it is not clear that every intern at a prestigious studio is a member of an organization which requires outstanding achievements of its members as contemplated by the regulations.

The petitioner also submitted a letter from [REDACTED] Chairman of the District Counsel of the Union of Bulgarian Teachers, asserting that the petitioner has been a member of the Union since 1985 and that he "assists the Third School of Special Education where children with mental delays are studying, and is a regular member of its organizations." Membership in a Union, which usually merely requires working in a specific field, is not membership in an organization which requires outstanding achievements of its members. While the petitioner's work with mentally delayed children is extremely admirable, it does not necessarily reflect national acclaim in the field of art.

In response to the director's request for additional documentation, the petitioner submitted his membership card in the American Society of Artists. The card indicates the petitioner became a member in 2001, after the date of filing. As stated above, the petitioner must establish eligibility at the time of filing. Regardless, the record does not contain any evidence regarding the membership requirements for this Society. Thus, the petitioner has not established that the Society requires outstanding achievements of its members.

In light of the above, the petitioner 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 director asserted that the petitioner had not submitted sufficient evidence of national or international acclaim through published media. On appeal, the petitioner accuses the director of ignoring the evidence submitted.

The petitioner submitted no evidence regarding this criterion initially. In response to the director's request for additional documentation, the petitioner submitted 2001 newspaper articles and evidence of a 2001 radio interview. As stated above, a petitioner must demonstrate eligibility at the time of filing. Media coverage after the date of filing is not evidence of the petitioner's eligibility at that time. As such, we concur with the director that the petitioner has not established that he met this criterion at the time of filing. Thus, we need not examine whether the newspaper articles and radio interview constitute coverage in major media.

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 record did not establish that the petitioner's contributions to his field are significantly greater than other qualified artists. On appeal, the petitioner notes that he has created a new technique and that most artists cannot claim the types of accomplishments he has demonstrated.

In support of this criterion, the petitioner initially submitted several reference letters. [REDACTED] Director of Giovannelli Fine Arts, asserts that the petitioner "possesses a perfect driving and plastic expression as well as mastery of the colors." Mr. [REDACTED] continues that the petitioner is talented and demonstrates a "unique interpretation of themes and subjects" but concludes only that the petitioner "has a potential and great perspectives."

[REDACTED] of the Bob Blackburn Studios asserts that everyone at that studio recognizes the petitioner's talent, that his exhibits have been successful, and that he has a good knowledge of art history. He concludes, "we feel convinced that he has potential and a great future as an artist."

██████████ of the J.M.G. Marounouchi Gallery asserts that the petitioner is an excellent printmaker, watercolor painter, and collagist. ██████████, a fellow printmaker and painter at the Printmaking Workshop, asserts that he admires the petitioner's work.

██████████, a professor at the University of Paris, Pantheon-Sorbonne, Section of Plastic Arts, asserts that the petitioner was an outstanding student of his for three years. He states that the petitioner "has the ability to excel far beyond his current potential." ██████████ another professor at the same institution, provides similar praise, asserting that the petitioner's work "reflects his mastership and excellent skills in the sphere of engraving and painting composition." ██████████, a third professor from the same institute, asserts that the petitioner achieved "excellent results" and concludes, "it will be helpful for him to apply his wonderful skills elsewhere in order to further improve his technique."

██████████ critic and art historian at the Sofia City Gallery, writes that the petitioner has an individual style of motion and development and that his works at group exhibitions have impressed audiences and specialists "with its system, intimacy, with [sic] its own space, and the mastership of the artist." ██████████ a gallery attendant at ONI Partnership - Sofia, praises the petitioner's unique style as reflected at a 1996 exhibition. Ms. ██████████ continues:

The subjects imply the figurative search of man in space. Geometric figures and Bible symbols fill the compositions with rhythm, light spots replacing the dark ones, soft colours merging into sharp ones. Time-motion-space interweave in his works.

This one man show and his participation in several group exhibitions make me give very high praise to the professional development and creativity of [the petitioner.]

While the above letters all provide praise of the petitioner's talent and assert that he has tremendous potential, they do not indicate that he has already made a contribution of major significance or identify any specific contributions.

██████████ former principal of the 16th Primary School in Sofia, praises the petitioner's abilities as a teacher at that school, asserting that his students have won well-deserved prizes. She continues:

As a part-time expert at the Educational Department of Nadejda Administrative Service, [the petitioner] is helping his colleagues in the area. He organizes training courses, workshops, exhibitions, and establishes useful contacts with the community.

While the petitioner has taught primary school children, been active in the field and helped his colleagues, Ms. ██████████ does not explain how the petitioner has influenced the field of art at a national level in Bulgaria, or anywhere else.

In response to the director's request for additional documentation, the petitioner submitted a letter from a real estate agent asserting that she recommends the petitioner's work and a letter from Lino Puccio asserting that he uses the petitioner for the creation of promotional materials for his business. While these letters indicate that the petitioner is successful and is gaining a reputation in New York, they are not evidence of the petitioner's influence on the field nationally or his national acclaim.

Finally, the petitioner submitted letters praising his new technique of dipping paper in water with water colors in it and asserting that it has attracted attention in Paris and New York. The record does not reveal that, as of the date of filing, the petitioner had influenced the field of art nationally or internationally with this new technique. Moreover, 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.

In light of the above, we concur with the director that the petitioner has not demonstrated major contributions to the field of art.

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

Neither the petitioner nor the director address this criterion. The record, however, includes a letter from [REDACTED] Editor-in-chief of *Silence*, a publication aimed at deaf Bulgarians. Ms. [REDACTED] asserts that the petitioner was "an active contributor" to the newspaper and continues:

Over 29 caricatures of high artistic value have been published in the newspaper. He has a significant contribution to the graphic layout of the newspaper, to the improvement of its artistic level, and to the creation of lasting aesthetic criteria of the publication.

Ms. [REDACTED] does not indicate that the newspaper published any scholarly articles authored by the petitioner. Thus, the petitioner has not established that he meets this criterion.

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

Despite this criterion's obvious relevance to the petitioner's field and the submission of evidence addressing this criterion, the director failed to discuss this criterion. We will evaluate the evidence as it relates to this criterion.

As is clear from the letters discussed and quoted above, the petitioner has clearly exhibited his work. The petitioner also submitted an advertisement for the 2000 Print Making Work Shop exhibition listing the petitioner as one of 16 artists whose work would be displayed there. Exhibiting one's work, however, is inherent to the field of art. Any successful artist must exhibit his art somewhere in order to sell it. The petitioner must demonstrate the significance of the

exhibitions if he is to establish that the exhibitions reflect national acclaim. The record contains little information regarding the significance of the exhibitions in which the petitioner participated.

As stated, the petitioner has also contributed to *Silence*. Ms. [REDACTED] is not clear, however, whether the petitioner simply assisted with the graphic layout of the newspaper or whether his own work was published in the paper.

In response to the director's request for additional documentation, the petitioner submitted letters from other New York galleries confirming that the petitioner would be exhibiting his work there. As with the above evidence, the petitioner has not demonstrated the significance of these galleries. Moreover, a petitioner must demonstrate eligibility at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Exhibitions after the date of filing cannot establish the petitioner's eligibility at that time.

In light of the above, the petitioner has not established that his exhibitions have been of sufficient significance as to be indicative of national acclaim.

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

The director also failed to address this criterion.

In response to the director's request for additional documentation, the petitioner submitted a letter from the President of the "7 Plus 1" Visual Arts Center in Sofia, asserting that on October 23, 2000, the Center elected the petitioner as the Executive Director for International Development and Exchange. The petitioner was elected to this position almost a month after filing the petition. As such, it is not evidence of his leading or critical role at the time of filing. Moreover, while the petitioner provided general information about the Center, including that it was founded in 1997, the petitioner has not submitted evidence of the Center's reputation nationally.

The petitioner also submitted a letter from the director of *Zlaten Zmej*, a publishing company of scientific and historic literature, asserting that the petitioner has been chosen for the "realization" of a book dedicated to fine arts. It is not clear that by heading up one project, the petitioner is playing a leading or critical role for the publishing company as a whole. Moreover, it is also not clear that the petitioner was assigned this project prior to the date of filing.

In light of the above, the petitioner did not meet this criterion at the time of filing.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In response to the director's request for additional documentation, the petitioner asserted that remuneration is not always an accurate gauge of an artist's abilities. He continued that in 1999 he lived in Paris, earning \$27,000, an amount "above the middle salary in France." He further

asserted that in 2000 he was just making contacts in New York, and that in 2001 he is starting to earn the "average salary given by the Department of Labor Statistic for [a] person working in the visual art" or \$30,000. He concluded that his sales for 2002 would double or even triple.

The petitioner submitted letters from the Vodenicharov Gallery in Paris regarding his earnings for 1999, 2000, and 2001 as of July 30 and from other companies which purchased the petitioner's work or used his services for advertisements. The petitioner also submitted information from the Department of Labor Statistics indicating that the top 10 percent of visual artists earn more than \$64,580. As such, in order to meet this criterion, the petitioner would need to have already earned more than this amount at the time of filing. Projections for future earnings are insufficient.

On appeal, the petitioner asserts that the director unfairly determined that he was ineligible based on his salary. He asserts that in the field of art, the sale price of paintings during an artist's life may not be indicative of his talent.

The director, while concluding that the petitioner did not meet this criterion, did not conclude that not meeting this criterion precluded the petitioner from establishing eligibility despite meeting other criteria. Even if we accepted that remuneration is not an accurate gauge of an artist's talent, or less likely, his national acclaim, there are nine other criteria, of which the petitioner need only meet three. For the reasons discussed above, the petitioner has not demonstrated that he met any of the criteria at the time of filing.

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.