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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: WAC 01 230 53218 Office: CALIFORNIA SERVICE CENTER Date: APR 16 2003

IN RE: Petitioner: [redacted]
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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 petitioner is a painter and calligrapher. 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 pertinent regulations 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 she has sustained national or international acclaim at the very top 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.

Counsel states that the petitioner received "nine national awards and honors" for her work as an artist. Of the nine certificates in the record, six simply acknowledge her participation in artistic exhibitions or indicate that various art galleries or institutes have added works by the petitioner into their permanent collections. Artistic exhibitions are covered by a separate criterion, further below; a certificate issued to acknowledge participation in such an exhibition is not documentation of a prize or award. Similarly, inclusion in a collection is neither a prize nor an award. Counsel's reference to "awards and honors" does not alter the wording of the regulation, which refers to "prizes and awards."

A certificate from 1991, issued by the China Metallurgy Bureau, the China Industrial News Association, and the Cultural Service Center of China Capital Industrial Newspaper Association states that the petitioner "won First Prize in China Metallurgy Painting and Calligraphy Great Competition." A 1995 certificate from the China Buddhism Culture Research Institute indicates that a work by the petitioner "won the First Prize" at the "1995 Spring National Chan Works Exhibition." A 1999 certificate from the Planning Committee of China Shuzheng-Cup Painting and Calligraphy Great Competition states that a piece by the petitioner "won Top Artist Prize."

The director specifically instructed the petitioner to submit additional information about the above awards to establish their significance. Although the petitioner responded to this notice (as discussed further below), that response included no further information or evidence about the petitioner's awards. On appeal, when listing the criteria that the petitioner purports to have satisfied, counsel does not list the criterion pertaining to prizes and 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.

The petitioner submits copies of membership certificates from the Beijing Artist Association, the Chinese Culture and Art Ludong Research Institute, the Art Committee of the Institute of the Chinese Calligraphy Art [sic], and the Asian Art Museum at the Chong-Moon Lee Center for Asian Art and Culture. The record does not establish the nature of these memberships. It is not clear, for instance, that the Asian Art Museum is an "association in the field" at all. Of these four associations, counsel discusses the membership requirements of only one. Counsel states:

> The Beijing Artist Association is an elite group of 900 members. . . . Membership in the association is designed for individuals who possess outstanding achievements in their respective field, as judged by recognized international experts in their discipline. In order to be accepted for membership, an applicant must submit an application along with a sponsor's written recommendation and references. . . . Election to membership status requires a 2/3 vote by the

> Membership Committee and subsequently approved by 2/3 of the Board of Directors.

The record contains no documentation to support the above claim. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, there is no indication that the Beijing Artist Association (which bears the name of a city rather than a country) is national or international rather than local.

For the above reasons, the petitioner has not shown that she is a member of associations in the field that require outstanding achievements of their members as judged by recognized national or international experts.

> *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 petitioner submits translated copies of several newspaper and magazine articles. Some of these translations appear to be incomplete. For example, the translation of a three-page article consists of four paragraphs containing one to three sentences each. The petitioner also submits three untranslated books, for which the record contains no information regarding the circumstances of their publication or the extent of their distribution.

The record contains little information about some of these publications. A number of the publications are clearly identified as U.S.-based Chinese-language publications. In one instance, the petitioner submits one translation to cover five articles, the translator indicating parenthetically that the five papers carried the "same report." The content of these articles suggests that the petitioner's media coverage has been largely confined to Chinese-language publications in San Francisco. The translations of several of these articles are demonstrably incomplete; the Chinese originals contain names (in English), dates, and telephone numbers that do not appear in the accompanying translations.

An English-language press release discusses the then-upcoming tour of the "50 U.S. State Flowers" exhibit; there is no evidence that this exhibition attracted media attention in the U.S. outside of San Francisco. There is also no evidence that the petitioner's work in the United States has attracted any coverage in English-language media. Coverage restricted to Chinese-language newspapers in the United States necessarily limits the petitioner's exposure and, thereby, the potential for acclaim. Recognition among San Francisco's Chinese community is not national or international acclaim. We note also that while a published article may derive largely from a press release, the press release itself is not published material.

One of the translated newspaper articles states that the petitioner was the subject of a thirty-minute interview on China Central Television. The record contains no first-hand confirmation or description of this vaguely-described broadcast.

While the petitioner has submitted a substantial number of newspaper and magazine articles, the evidence in the record does not show that the petitioner has consistently been the subject of national-level media coverage. Since her arrival in the United States, her coverage appears to have been almost exclusively in Chinese-language newspapers published in the San Francisco Bay Area. Thus, we cannot find that the petitioner has satisfied this criterion.

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

Counsel states that the petitioner's "recently completed project, coordinated with the American Botanical Association . . . entitled '**50 United States State Flowers,' has received overwhelming recognition from many U.S. Governors and Senators, as well as numerous State and Local officials.**" (Emphasis in original.)

Counsel also cites "letters from respected members of the artistic community attesting to petitioner's stature as an exceptional artist." Mark Johnson, associate professor at San Francisco State University and director of its Fine Arts Gallery, states:

> Although I have only recently learned about her work, I understand [the petitioner] is a master of mounting scrolls, seal carving, calligraphy as well as painting. We anticipate inviting her to perhaps lead a workshop in mounting in the future. Her works can be almost abstract but on longer inspection one can discern beautiful images of flowers and birds. I have seen several original works, and find them to be elegant and strong.

Terese Tse Bartholomew, curator of Himalayan Art and Chinese Decorative Art at the Chong-Moon Lee Center for Asian Art and Culture, San Francisco, states:

> [The petitioner] has created a visual language that incorporates the elements of Chinese calligraphy into unique works of harmonious beauty. The dynamic quality of her brush strokes lays the foundation for her distinctive self-expression through her magnificent works. The flow of the lines and the graceful application of the almost translucent colors in each of her paintings create scenes that exude a certain serenity. . . .
>
> [The petitioner's] extraordinary achievement in art has been widely praised by the art community. She has recently taken on a new project entitled the "50 State Flowers" and has received overwhelming recognition from more than nine governors and many museums in the United States.

Lampo Leong, then an instructor of Art and Art History at Mission College, Santa Clara, states "I have had the privilege to review the paintings and calligraphy by [the petitioner]. I found her to be an individual at the very top of her field, moreover, her achievements in art and the recognition accorded her by art professionals are outstanding. She demonstrates a unique way of depicting lines and rhythm in space, integrating East and West."

[redacted] former curator of the U.S. Old Mint Museum from 1989 to 1995 (when the museum closed), states that the petitioner's "50 U.S. State Flowers" project has "received considerable support and encouragement from U.S. government officials at the Federal, state and local level." Mr[redacted] predicts that the traveling exhibition will help viewers to "appreciate our State flowers and further aid their understanding and appreciation of the traditional Chinese brush painting techniques."

The only witness not based in or very near San Francisco is Professo[redacted]of China's Central Academy of Fine Arts, who praises the petitioner's technique and states that the petitioner "is one of the most inspirational female artists in China today." Professor[redacted] does not indicate the extent to which the petitioner's work has influenced other artists in China or elsewhere, nor does Professor Bo identify any particular contribution of major significance. A simple description of the petitioner's technique cannot suffice to fulfill the regulatory criterion.

The petitioner submits copies of numerous letters from various state governors, U.S. senators, and other elected officials commenting on the petitioner's "50 U.S. State Flowers" project. Comments in the letters (e.g. "[t]hank you for contacting me") indicate that the letters are responses to earlier letters from the petitioner, rather than spontaneous expressions of support and recognition for the petitioner's work. Some of these individuals clearly state that they have not actually seen the paintings.

The record contains no evidence to show that art experts and specialists at a national level consider the petitioner's state flowers paintings to represent a contribution of major significance, or that the petitioner has otherwise earned a sustained reputation as one of the nation's top artists. The thematic concept of painting the official flower of every state is not unprecedented; painted images of all the state flowers (and state birds) appeared in a series of 50 U.S. postage stamps issued in 1982.

While the record shows that the petitioner has been a prolific artist whose work has attracted some degree of favorable attention, the evidence does not demonstrate that the petitioner has been widely credited with original artistic contributions of major significance.

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

Counsel states that the petitioner's "solo exhibit in 1995 at the Chinese National Art gallery in Beijing created a commotion among the art community in China and propelled her to a different level. Since then, she has been highly sought after to exhibit her works throughout China and the world." Counsel's words are taken verbatim from a biographical sketch of the petitioner that appeared in the brochure for one of her exhibitions.

The record contains a certificate indicating that the petitioner had a solo exhibition at the "China Art Gallery," which appears to be same entity as the "Chinese National Art Gallery." In a letter, [redacted] of the China Art Gallery states that the gallery is "one of the best-known galleries in China and abroad," and that the petitioner is a "renowned Chinese female painter [whose] works have been

exhibited numerous times in our gallery since 1988." Most of the petitioner's other exhibitions have been in San Francisco.

Regarding the petitioner's "50 United States State Flowers" series of paintings, which counsel states may be the petitioner's "most celebrated project to date," counsel states that the project "will be on a touring exhibition throughout the United States." Counsel states "[t]he Northern California Council of the National Museum of Women in the Arts will be coordinating the traveling exhibition as it moves from state to state over the next few years." The traveling exhibition was not yet underway as of the date of filing; documents from several months after the filing date continue to refer to the exhibition as a planned event rather than one already in progress.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*
>
> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

Counsel cites auctions and sales of the petitioner's art work as evidence of the petitioner's commercial success (albeit not in the performing arts) and thus, high remuneration. Letters and certificates from various art dealers indicate that the petitioner's works command high prices. [redacted] of China Art Gallery states that the petitioner's paintings command between 4,000 and 20,000 yuan in China. [redacted] president of Stylers Art Gallery in San Francisco, states that "[t]he price range for her work is from $500 to $10,000," and indicates that "many private collectors have acquired [the petitioner's] art works." The record contains no evidence to allow a meaningful comparison between the petitioner's paintings and other paintings of comparable size in the same artistic genre.

Furthermore, a statement of the price range of the petitioner's work does not establish the quantity of such work that is actually sold. The petitioner has not submitted documentation (such as certified tax returns) to establish that her annual earnings exceed those of most other artists in her specialty.

The director instructed the petitioner to submit further evidence to establish the petitioner's eligibility. In response, the petitioner submits new letters and exhibits.

The new letters are from individuals and organizations in the San Francisco area, in keeping with the previous pattern of localized acclaim. The only witness not currently based in the Bay Area is Lampo Leong, assistant professor of Art at the University of Missouri-Columbia, who had previously written from Santa Clara, California. The relocation of one of the petitioner's witnesses from the Bay Area to Missouri is not persuasive evidence of significant acclaim outside of San Francisco. The other letters submitted are older letters from a U.S. senator and a curator at the Smithsonian National Museum of American Art. Both of these brief letters contain little more than general congratulations for the petitioner's having undertaken a large-scale project.

With regard to the petitioner's remuneration, counsel asserts "Petitioner's '50 U.S. State Flowers' is itself valued at $120,000." To support this assertion, counsel cites "Exhibit 3c," which is an article from the *Milpitas Post*. The article states that the fifty paintings have been "[v]alued at $120,000" but does not identify the artist or the entity which declared the value of the paintings. The record does not indicate that the petitioner has actually sold the state flowers paintings; some letters in the record suggest that she has offered to donate them to the respective states upon the conclusion of the planned traveling exhibition (which, as of December 2001, had not yet been launched).

Furthermore, the state flowers series is not a single work of art, but a collection of fifty paintings. Dividing $120,000 by fifty yields a value of $2,400 per painting, still a considerable sum but much lower than $120,000. The work of other artists would similarly yield high numbers if the values applied not to individual works but to lots of fifty paintings.

Auction documents show that one of the petitioner's paintings commanded 130,000 yuan in 1999; another sold for 92,000 yuan in 2000. The record offers no basis by which to compare these prices to the prices of comparable works by other artists, or indeed even to compare the prices to the cost that the petitioner incurred in creating them. The petitioner also submits documentation showing that Butterfields, a San Francisco auction house, sold two of the petitioner's paintings in December 2001. [redacted], administrator of Asian Works of Art at Butterfields, states that one of the paintings "saw competitive bidding and fetched double its high estimate." By implication, the other painting did not see competitive bidding.

Regarding the petitioner's media coverage, counsel asserts that *The China Press* has "a circulation of approximately 120,000," *The World Journal* has "a circulation of over 298,500," *Sing Tao Daily* has "a total circulation of 181,000 in cities throughout the U.S." Counsel notes that, more recently, the petitioner has appeared in the English-language *AsianWeek*. The *AsianWeek* article was published in February 2002, long after the petition's July 2001 filing date. Thus, under the best circumstances, the article was published too late to establish the petitioner's eligibility at the time she filed the petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The article itself is about [redacted] (apparently the same person as the [redacted] who wrote a letter on the petitioner's behalf). The petitioner's name appears only once in this article; she is identified as a "San Francisco calligraphy painter [who] spent four hours autographing and dedicating Year of the Horse envelopes" at a ceremony commemorating the issuance of a postage stamp honoring the Year of the Horse. Mr. [redacted] did not design the stamp, but he did design a commemorative envelope to which the stamp was affixed for a commemorative first-day cancellation. Mr. [redacted] and the petitioner collaborated on the pictorial cancellation.

Materials in the record show that the circulation figures cited by counsel for the various Chinese-language publications are aggregate totals of several different editions, published in various cities with large Chinese populations. The petitioner has not shown that the articles about her have appeared in all the various editions of the papers, rather than just the San Francisco edition.

The petitioner submits an English-language brochure from the China Art Gallery, establishing that it is a major repository of Chinese art. A solo exhibition at this establishment would appear to be a significant event, and thus the petitioner has further established that she has satisfied 8 C.F.R. § 204.5(h)(3)(vii). The petitioner also submits documentation regarding other galleries in China that have shown her work.

Counsel states that the petitioner "has recently been appointed to be an advisor for the American Eastern Culture Foundation of New Jersey." The petitioner was notified in March 2002 of her appointment to a two year term from January 2002 through December 2003. The record contains no independent documentation about this foundation. The petitioner's 2002 appointment falls after the July 2001 filing date and thus cannot retroactively establish eligibility as of the filing date. Also after the filing date are several cultural workshops and other activities in which the petitioner has participated. These recent events show that the petitioner remains active in her field, but do not demonstrate sustained national acclaim.

The director denied the petition, having determined that the petitioner had not met the minimum threshold of eligibility. On appeal, counsel asserts that the director "failed to look at the evidence in its totality, especially in light of the unique and specialized field of Chinese traditional brush painting." Counsel is entirely correct in asserting that it is important to view the record as a whole rather than simply treating the regulations as a checklist. Nevertheless, the shortcomings in the record are not due to the petitioner's "unique and specialized field." Rather, the director denied the petition because the petitioner failed to meet the criteria set forth in the regulations. The evidence, viewed as a whole, depicts the petitioner as an artist who has achieved a considerable measure of success in her native China, but whose reputation in the United States is largely limited to the Chinese community in San Francisco. While the petitioner was more successful in China than she has so far been in the United States, the record does not contain persuasive, objective documentation (as opposed to isolated opinions expressed by witnesses whom the petitioner has selected) that would place the petitioner at the top of her field in either country.

Counsel reiterates several previous claims, such as the assertion that the petitioner has been the subject of published material in major media and has received high remuneration. As noted above, these assertions rely on assumptions not in evidence. For instance, the petitioner has provided raw figures regarding the prices commanded by some of her art works, but the record offers no reliable basis for comparison between the prices of her works and the prices of similar works by other artists. The very wording of the regulation includes the phrase "in relation to others in the field," and so without such comparative evidence the petitioner cannot satisfy that regulatory requirement. It cannot suffice to show the prices the petitioner's paintings command, and then simply declare those prices to be extraordinarily high. Counsel, on appeal, repeats the earlier error of treating the declared value of the petitioner's unsold work as evidence of remuneration.

Counsel asserts that the United Nations and various governments have collected the petitioner's work, but the only evidence of this consists of letters thanking the petitioner for apparently donating the paintings. There is no evidence that the paintings were commissioned in advance or purchased, or that,

for example, the United Nations has since put the petitioner's work on prominent display. Counsel contends that the record demonstrates the petitioner's influence throughout the field. More accurately, the record (particularly with regard to the petitioner's work in the U.S.) reflects the petitioner's efforts to promote her work, for instance by donating her works to high-profile institutions and writing to prominent public officials to inform them of her state flowers project.

Two exhibits accompany the appeal. One is a letter from Dr. [redacted] curator of Asian Art at the Museum of Art at the Rhode Island School of Design. Dr. [redacted] praises the petitioner's "strong artistic background" and "special skills [that] provide her with the means to serve as a uniquely gifted Chinese cultural emissary to the United States." Dr. [redacted] does not, however, indicate that the petitioner is a well-known or acclaimed artist, or even that she had heard of the petitioner before Dr [redacted] and the petitioner "both participated in a Chinese cultural program held at the Community College of Rhode Island." The other exhibit is a November 2002 auction catalog from Butterfields, indicating that the San Francisco-based auction house had agreed to auction another of the petitioner's paintings. At the time the appeal was filed, in October 2002, this auction had not yet taken place. Neither of these exhibits overcomes or even addresses any of the director's substantive findings.

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 herself as a painter or calligrapher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.