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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: California Service Center Date: AUG 19 2003

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 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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

It is noted that the petitioner was initially represented by [redacted] will be referred to herein as the petitioner's former counsel, or previous counsel. References simply to "counsel" will refer to the petitioner's current attorney of record, who submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, in response to the director's request for evidence.

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...
> >
> > > (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 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, filed on June 17, 2002, seeks to classify the petitioner as an alien with extraordinary ability as an artist/designer of postage stamps. 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, 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.

The petitioner has submitted documentation showing that he won first prize in two nationwide postage stamp design contests. In 1996, the petitioner's design was chosen for the Commemorative Stamp of the Fifteenth National Congress of the Communist Party of China (officially issued in 1997). In 1999, the petitioner's design was chosen for the Commemorative Stamp of the Shenzhen Special Economic Zone (officially issued in 2000).

On appeal, counsel states:

> Since 1985, China [has] adopted a competitive mechanism for stamp design. A public announcement will be made soliciting stamp designs nationwide for a specific subject stamp scheduled to be issued in the next year. All the competing designs will be submitted to the Stamp Evaluation Committee, the organization vested by the Ministry of Posts and Telecommunications with the authority to select and recommend the best stamp design and submit it to the Ministry of Posts and Telecommunications for final review and approval. Upon approval by the Ministry, the chosen stamp design will become the official stamp design and be issued by the government.

The petitioner has provided supporting documentary evidence from sources such as The Philatelic Dictionary of China, *China Stamp Collection* (the "official journal of the All-China Philatelic Federation"), and major Chinese newspapers confirming the national significance of his prizes. For example, a November 12, 1997 article about the petitioner appearing in the *People's Daily*, China's most widely-circulated newspaper, states: "The well-known commemorative stamp for the Fifteenth Representative Conference of the Communist Party was also designed by [the petitioner].... It has won acclamation for its creative concept, concise pattern, gorgeous colors, and elegance."

The director's decision implies that international recognition is required under this criterion. It states:

> The self-petitioner's field of endeavor, art, more specifically postal stamp design, is international rather than regional or national in scope. Examples of awards which enjoy truly international recognition include the Nobel Prize, the Academy Award, and Olympic Gold Medals.

We withdraw the director's finding. While 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, internationally recognized award such as a Nobel Prize), an international award of that magnitude is not required under this lesser criterion; evidence of a nationally recognized award is sufficient. The director cannot impose a higher standard under this criterion by requiring receipt of a major, international award. We find that the extensive documentation presented, which shows that the petitioner's prizes enjoy significant national recognition, satisfies this criterion.

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.

On appeal, counsel states: "We agree with the director that the evidence is insufficient to establish the alien's eligibility for this category."

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien would not earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted translations of articles appearing in the *People's Daily*, *Guangzhou Daily*, *Shenzhen Daily*, *Wenhui Press*, *Xinmin Evening News*, *Shenzhen Evening News*, and *China Stamp Collection*. It is noted that the majority of the published articles presented discuss the petitioner's work as postage stamp designer. The petitioner also provided independent evidence showing that the publications featuring those articles enjoyed significant national distribution in China. Therefore, we find that the petitioner's evidence satisfies this criterion.

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

The petitioner submitted evidence showing that he was named as a co-inventor on two Chinese patents approved in 1999. The petitioner and his collaborators were issued patents for a "loose-leaf stamp catalogue and collection album" and a "three-dimensional autograph album." The issuance of a patent, however, documents only that an invention is original; not every patented invention constitutes a contribution of major significance. For some perspective, according to statistics released by the U.S. Patent and Trademark Office, which are available on its website at *www.uspto.gov*, that office alone has approved over one hundred thousand patents per year since 1991. In 2001, for example, it received 345,732 applications and granted 183,975 patents. Therefore, we must consider the significance, not

just the originality, of the petitioner's inventions. The record contains no supporting documentary evidence showing that the two patents developed by the petitioner resulted in a highly demanded product or that the inventions received widespread national or international attention. For example, it has not been shown that the loose-leaf stamp catalogue was a major commercial success (as documented by a significantly high product sales volume) or that the invention received major media attention or national prizes for innovation.

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

The petitioner submitted evidence of his first-authorship of articles about stamp design featured in *China Stamp Collection*, a philatelic journal that has been shown to qualify as a major trade publication. Also submitted was evidence that the petitioner was the first author of an article appearing in *Securities Times*, a financial trade publication. The petitioner's article offered advice regarding the investment value of stamps. We concur with counsel that the petitioner's evidence satisfies this criterion.

In this case, the petitioner has demonstrated that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The evidence presented shows that the petitioner has earned national acclaim in China as an artist/designer of postage stamps.

Beyond the decision of the director, 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise," pursuant to section 203(b)(1)(A)(ii) of the Act. Thus, the remaining issue to be determined is whether the petitioner will continue to work to work as an artist/designer of postage stamps here in the United States.

The petitioner has submitted a letter and other supporting evidence detailing his plans regarding how he intends to continue working in the United States. The petitioner's letter states that he plans to design postage stamps and other products such as first day stamp covers, books, magazines, and stamp albums. The petitioner's fulfillment of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), however, was based solely on his expertise as an artist/designer of postage stamps. While an artist/designer of postage stamps and a graphic designer of other philatelic items such as stamp covers, books, and magazines require knowledge of philately, the jobs rely on very different sets of basic skills.[1] Thus, the jobs are not the same area of expertise.

This interpretation has been upheld in Federal Court. In *Lee v. Ziglar*, 237 F.Supp.2d 914 (N.D.Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability,

[1] According to information provided by the petitioner from the United States Postal Service's website: "Stamp designing is an unusual art form requiring exacting skill in portraying a subject within very small dimensions."

> not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. On the I-140 petition form, the petitioner has clearly indicated that his occupation is that of "artist - stamp designer." We find that petitioner's future plans for employment as a graphic designer of other philatelic products such as first day stamp covers, books, and magazines are not within his claimed area of expertise - postage stamp design.

With regard to petitioner's plans to design U.S. postage stamps, all stamp designs are commissioned and approved by the United States Postal Service (USPS). Therefore, in this instance, clear evidence that the alien is coming to the United States to continue work in the area of expertise must include documentation from the USPS, establishing the USPS' interest in utilizing the petitioner's designs.

The record includes a response to the petitioner's proposal to create stamps for the USPS. Terry McCaffrey, Manager, Stamp Development Services, USPS, states: "We certainly appreciate your interest in developing these stamps, but we are unable to consider them as part of our program." Also submitted was information from the internet about the USPS' Citizens' Stamp Advisory Committee, stating: "Due to the demands of stamp design and reproduction requirements, it is not our policy to review nor accept unsolicited artwork."

The record contains no evidence showing that the petitioner has made progress in achieving his stated goals. It is noted that the petitioner has been residing in the United States since 2001. The petitioner, therefore, has had a reasonable amount of time to demonstrate that he will continue working in his area of expertise. That the petitioner has registered a company name, New Ark Culture, Inc., with the State of California, or that he has graphically designed a small number of artistic stamp covers in accordance with the USPS' standard mailing guidelines carries little weight in this matter. Far more important is whether the petitioner or his company has an agreement to design postage stamps for the USPS.

If the petitioner cannot establish that the USPS is committed to using his designs, then we cannot conclude that the petitioner will continue working in the area of postage stamp design in the United States. We note that both the statute and the regulations state that no specific job offer is required for the classification, but we cannot ignore that, in this instance, the only possible outlet for postage stamp designs in the United States is through the USPS, and the petitioner cannot successfully design U.S. postage stamps without the involvement of the USPS. In sum, the record contains no substantive evidence showing that the petitioner has actually engaged in, or positioned himself to serve in, work as an artist/designer of postage stamps here in the United States.

In this matter, we find that the petitioner has satisfied three of the ten lesser criteria set forth in the regulation at 8 C.F.R. § 204.5(h)(3) as a artist/designer of postage stamps. However, the evidence now in the record fails to show that the petitioner will continue to work and support himself in the U.S. primarily through his skill in designing postage stamps. The director, however,

does not appear to have informed the petitioner of this deficiency in the notice of denial. Therefore, we conclude that the best course of action is to remand this matter for further action.

Accordingly, this matter will be remanded for the purpose of a new decision. The director must afford the petitioner reasonable time to address the above deficiencies and to obtain any further evidence which the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to 8 C.F.R. § 204.5(h)(5). If the director again denies the petition, the decision shall inform the petitioner of the specific deficiencies 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 Administrative Appeals Office for review.