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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, N.W.  
Washington, DC 20536



**DEC 8 - 2003**

File: WAC-02-198-53257

Office: California Service Center

Date:

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)

ON BEHALF OF PETITIONER:



**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 Citizenship and Immigration Services (CIS) 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*   
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 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 asserts that in response to the director's request for additional documentation he requested that his petition be considered under Section 203(b)(2) of the Act relating to advanced degree professionals and aliens of exceptional ability, and that he be considered for a national interest waiver of the job offer requirement for that classification.

The petitioner indicated on the initial petition that he was seeking classification pursuant to Section 203(b)(1)(A) of the Act. The petition was accompanied by an exhibit list corresponding to the requirements for Section 203(b)(1)(A). The director's request for additional documentation did not offer the petitioner the option of requesting a lesser classification. In response, among the numerous other documents submitted, the petitioner included a one-sentence statement requesting "to change from EB-1 to EB-2." Section 203(b)(2) of the Act normally requires a job offer and a labor certification. The record does not include a labor certification approved by the Department of Labor. The petitioner did not specifically request a national interest waiver of that requirement and did not explain why a waiver of that requirement would be in the national interest. While he requests a national interest waiver on appeal, he still provides no explanation of why such a waiver would serve the national interest, especially in light of the petitioner's job offer from Montecito Fine Arts School. Regardless, the petitioner has cited no statute or regulation that requires the director to consider a petition under a lesser classification than originally requested if the petitioner subsequently requests such consideration. While such consideration may be given by the director as a matter of discretion in some cases, the director is not obligated to consider the petition under the lesser classification, and did not do so in this case. Thus, we will only consider the petitioner's eligibility under Section 203(b)(1)(A).

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 CIS 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, the petitioner submitted his degree from the Zhejiang Arts Institution, a Gold Prize Certificate awarded to him in 1997 for the celebration of Hong Kong returning to China, a "Certificate to World-Known Artists" issued by the International Artists Association in 1997, and a newspaper article in an unidentified publication asserting that a local California politician presented the petitioner with a "ceremonial certificate" at an art exhibit at the China Press Hall in California. One of the petitioner's witnesses, Shao Guang Ting, references an award at the 1953 Moscow World Youth Festival and a 1994 gold medal awarded in Shanghai.

The director requested evidence of the significance of these awards. In response, the petitioner submitted a certificate from the Invitational Competition Evaluation Committee awarding the petitioner the Gold Prize "at the Celebration of the Return of Hong Kong 'Mid-China Cup' Invitational Competition." The petitioner also submitted evidence that he was honored with a gold prize and the title "model artist" at the Chinese National Calligraphy Painting Art Cup in an unspecified year and a letter from the Shanghai Ethnic Art Institute advising that the petitioner had won the gold prize but would need to pay ¥60 to receive the actual award, between ¥150 to ¥650 to

receive a gold plated cup (depending on the size), ¥80 for shipping materials and ¥450 for international shipping.

The director concluded that the petitioner had not established the significance of these awards, such as their “origination, purpose, scope as well as the criteria used to nominate and judge the participants and award winners.”

On appeal, the petitioner argues that his degree is not simply a diploma, but evidence that he has “received strict and professional education in [the] art field.” We cannot conclude that a degree, even at a competitive school, issued to every student who completes the academic requirements, is an “award” or “prize” for excellence.

The petitioner further asserts that the “Mid-China Cup” is a mistranslation, as “Zhong Yuan” refers to the original territory of China. The petitioner reiterates that the competition was in honor of Hong Kong returning to China and states that only a few artists’ works were selected from thousands of art works from China and from all over the world. The petitioner further asserts that the committee, made up of 50 prominent professors, artists, scholars, and government leaders, set very strict standards on the quality of the artworks. The petitioner submits a new translation of the prize but does not submit official materials about the competition itself confirming the petitioner’s own assertions regarding its significance. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It remains, the petitioner has not submitted information regarding how many gold and other prizes were issued and other evidence of the award’s significance, such as major media coverage of the competition itself.

The petitioner also asserts that the World-Known Artist Certificate is an international award “issued by a distinguished organization.” The petitioner continues that the World Artist Association is “one of the largest and the most influencing [sic] art professional [associations] in the world by now.” The petitioner asserts that the association has members in China, Hong Kong, Taiwan, Thailand, Singapore, Malaysia, Indonesia, the United States, Great Britain, and Europe. In addition, according to the petitioner, the association holds four competitions per year, an achievement that has been praised in major Asian newspapers. Finally, the petitioner asserts that the association publishes several collections of well-known artists. In support of these assertions, the petitioner submits materials from the association itself including information posted on its websites.

The self-serving promotional materials of the association are not evidence of the association’s prestige.<sup>1</sup> The petitioner did not provide examples of the major media attention the association

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<sup>1</sup> The record contains information from several websites: [www.world-artist.org](http://www.world-artist.org) (the site of the World Artist Association), [www.worlddartweb.net](http://www.worlddartweb.net), [www.worldchinesearts.com](http://www.worldchinesearts.com) and [www.allworlddarts.net](http://www.allworlddarts.net). All of these websites appear to be related. We note that, according to [www.register.com](http://www.register.com), [www.worlddartweb.net](http://www.worlddartweb.net), [www.world-artist.org](http://www.world-artist.org), and [www.chineseworlddarts.com](http://www.chineseworlddarts.com).

generates. Nor has the petitioner submitted the opinions of major internationally-renowned art museums confirming the international prestige of the association. Moreover, even if the petitioner had established the prestige of the World Artists Association, the certificate is better considered under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) discussed below.

Finally, the petitioner asserts that the Gold Prize of Artist Cup was jointly organized by the China National Artist Association and the Shanghai Ethnic Calligraphy and Painting Institute. The petitioner further asserts that both organizations have prestigious reputations and that the China National Artist Association "is a non-profit organization directly administered by the China Ministry of Culture." The petitioner resubmitted the certificate and certified translation. Once again, the petitioner did not submit any independent evidence to support his assertions regarding the significance of the competition or evidence of how many prizes were issued.

In general, the petitioner has not submitted independent evidence supporting his assertions regarding the significance of his award certificates, such as evidence of extensive media coverage of the issuance of the awards. Simply receiving an award at a competition that had contestants from around the nation or the world is insufficient. The petitioner must demonstrate that the award is nationally or internationally recognized as an award for excellence such that winning the award is indicative of or consistent with national or international acclaim.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

Initially, the petitioner submitted his membership card issued in 1992 by the Zhejiang Artists Association. The director requested "the minimum requirements and criteria used to apply for membership in the association." In response, the petitioner submitted a certificate issued by the World Chinese Interchange Association in Hong Kong accepting him and appointing him as an "International Artist." The petitioner also submitted a "World Renowned Artist Certificate" from the Shanghai Art Institute indicating that credential holders are "academicians with great attainments" as decided by the Ethnic Artists Committee or the Ethnic Calligraphy and Painting Committee. In addition, the petitioner submitted his membership card for the International Artists Association registered in Hong Kong. The director concluded that the petitioner had not submitted evidence of the requirements for membership as requested.

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com are all registered to "Zhoujian" in Beijing. While [www.allworldarts.net](http://www.allworldarts.net) is registered to the Beijing Shilu World Record Culture Company, Ltd., a company about which we could find no information on the Internet, that web address currently takes you to [www.worldartweb.net](http://www.worldartweb.net), which, as stated above, is registered to "Zhoujian." The information provided from [world-artist.org](http://world-artist.org) and confirmed on the Internet contains serious grammatical and spelling errors. It can be expected that a major internationally renowned association based in Hong Kong would register its website under its own name and would obtain an individual fluent in English to compose the English portions of the site.

On appeal, the petitioner asserts that the China Wu Changshuo Painting and Calligraphy Association is named after a famous painter and has 50 famous painters, 10 full-time professors, 10 adjunct professors, and 200 student members. The petitioner resubmitted his employment verification as “honorable president and president” of the association as of 1989. That the organization is named after a famous painter is not evidence of the organization’s reputation or that the organization has exclusive requirements for its general membership. That the petitioner is the president of this organization is better considered under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii) discussed below.

The petitioner asserts that the International Artists’ Association was registered in Hong Kong. The petitioner provides no evidence that registration in Hong Kong is indicative that the association requires outstanding achievements of its members. The petitioner further asserts that the association has an Assessment Committee that sets membership standards based on academic level, skills, invention and domestic or worldwide reputation. The petitioner resubmitted previously submitted materials regarding the association, none of which establish the association’s membership criteria. The petitioner did not submit the official bylaws of the association that set forth its membership criteria. Finally, the petitioner does not submit the official bylaws of the other associations that have issued him certificates. We note that the Zhejiang Artists Association appears to be a local association.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

Initially, the petitioner submitted a summary of his career in a China Fine Arts Academy pamphlet and short (two- or three-sentence) articles published in the *Market News*, the *Zhejiang Daily News*, and the *Zhejiang Evening News*. The petitioner also submitted advertisements and notices of art exhibits that appeared in other publications, including the *People’s Daily*.

The director requested evidence to establish the significance of these materials and the circulation of the publications in which they appeared. In response, the petitioner submitted a letter from the World Arts Association in Hong Kong advising that his painting was accepted for publication in the *World Chinese Art Work Collection*, an article in an in-flight magazine for Northwest Civil Aviation that appears to have been published in 1988, an unidentified publication with an uncertified translation regarding the petitioner’s donation of an oil painting to the White House, an article about the petitioner in Singapore’s *Xin Ming Daily News*, and more advertisements of exhibitions. The petitioner also submitted a book entitled *Selected Artwork by [the Petitioner]* published by the China Fine Arts Institute and an uncertified translation of a page “extracted from the Preface to ‘A collection of [the Petitioner’s] Art – A Late Success from the Ink Well.’” Finally, the petitioner submitted an uncertified translation of what is alleged to be the transcript of an interview with the petitioner on “China Central Television to Taiwan Program.”

The director concluded that the petitioner had not established the significance of the above media coverage, most critically, the circulation and distribution of the above publications. On appeal, the

petitioner asserts that his painting appeared in the Special Art section of the *People's Daily*, the most influential newspaper in China. While we do not question that the *People's Daily* is major media, the article itself is not about the petitioner. It is a notice of "the Centennial Tour to the Russian Art under the collaboration of Chinese Arts Association and San Yi Arts and Culture Foundation," consisting of 222 pieces of art by 16 artists. Thus, it cannot meet the plain language requirements of the criterion. Further, the translator states that the petitioner's name "was not mentioned in the text, but his work . . . was shown on the newspaper together with other Russian works." We cannot conclude that an article that does not mention the petitioner generated any acclaim for the petitioner. No one who did not already know the petitioner would learn about him from this published piece. Moreover, it is not clear if this piece is a press release or advertisement. Materials that are not the result of independent journalistic reportage cannot serve to meet this criterion.

The petitioner further asserts on appeal that the China Central Broadcasting Station is the biggest one in China. The petitioner resubmits the transcript of the alleged broadcast. The petitioner submits no evidence, such as a television schedule announcing the interview or confirmation from China Central Broadcasting confirming that the interview took place. Nor has the petitioner established that the interview was broadcast nationally.

The petitioner asserts that Northwest is one of the four largest airlines in China. As stated above, it appears that this article was published in 1988, fourteen years before the petition was filed. That period of time might not be significant if the record contained other evidence demonstrating that the petitioner had sustained any acclaim he might have had in 1988 through 2002, when the petition was filed. For the reasons discussed above and below, however, the record does not contain such evidence. Thus, the 1988 article about the petitioner cannot serve to establish his eligibility.

The petitioner submits no evidence to support his assertions regarding the circulation of the remaining publications in which his work appears. Thus, he has not overcome the director's concerns relating to this criterion.

*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.*

The petitioner did not initially claim to meet this criterion and the director concluded that the petitioner had not submitted any evidence relating to this criterion. On appeal, the petitioner claims for the first time to meet this criterion. The petitioner resubmits evidence of his membership in the Zhejiang Provincial Artist Association, his employment certificate of his guest professor appointment at the Hunan National Painting Museum and Hunan Art Gallery, and his World Renowned Artist Certificate from the Shanghai Ethnic Art Institute. The petitioner states:

These art entities are all national level organizations in China. I was often invited to participate in the conference [sic]; and in the judgement team or committee for the competition held for different events.

Previously in his appellate statement, the petitioner asserted that as President of the China Wu Changshuo Painting and Calligraphy Association, he was one of nine art judges and was often hired as a competition judge by other associations and academic entities. As stated above, it is insufficient to go on the record without supporting evidence. The petitioner did not submit any invitations to judge competitions or evidence that he accepted those invitations. Moreover, the record contains no evidence regarding the significance of any competitions allegedly judged. Finally, the evidence submitted in relation to each criterion must be evaluated as to whether it is consistent with or indicative of national or international acclaim. Simply judging the work of one's students as a guest professor is inherent to art instruction. We cannot conclude that every professor or instructor has national or international acclaim.

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

The petitioner submitted an uncertified translation of a "Printed Catalog by Huok International Arts Company" stating that the petitioner "used his invention of the 'drag and turn' technique in his monkey paintings." The director concluded that the petitioner had not submitted any evidence relating to this criterion. On appeal, the petitioner reiterates his claim to have invented the drag and turn technique, a new way of using "coke thick ink." In addition, the petitioner claims to have invented a "Three Words Bible" and painted an imitation of a Chinese national treasure that took the petitioner six months to complete while he was a student in 1948.

The petitioner submits three drawings using "thick ink of coke method," a description of the painting imitated by the petitioner, and a print of the petitioner's imitation. While the petitioner claims to be submitting the "Three Words Bible," it is not in the record.

While the petitioner may be using a different technique and ink, that alone is not evidence of a contribution of major significance in the field. Neither the catalog nor any other evidence in the record suggests that the petitioner's drag and turn technique or use of thick ink of coke has been widely influential in the art community. Similarly, even if the record contained the "Three Words Bible," the petitioner would need to demonstrate its influence. Finally, while the petitioner may have imitated a famous painting while a student, the record contains no evidence that the general art community views the imitation as a contribution of major significance to the field.

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

In response to the director's request for additional documentation, the petitioner submitted a list of articles, several Chinese-language articles from unidentified publications, an uncertified translation of "Technique and Tools Needed to Learn the Art of Color Combination" published in an unidentified publication, an evaluation of colors on C&P Produce Company stationery, and original painted squares cut and pasted onto larger pieces of paper with no explanation. The director concluded that the petitioner had not established the significance of the articles or that they were published in professional or major trade publications or other major media.

On appeal, the petitioner asserts that “Colors Contrast Teaching Academic Research,” his thesis, was published by Nan Art Education Publishing House, is used in China as an art textbook, and received national recognition. The petitioner asserts that the Nan Art Education Publishing House is the only publishing house owned and administered by the China Ministry of Education. The petitioner also reiterates his claim to have authored an additional 16 articles in unidentified publications. The petitioner resubmits his alleged thesis and a certified translation. The petitioner does not, however, submit any evidence that his thesis was published by the Nan Art China Ministry of Education or that it ever was and continues to be used all over China as an art text book. The petitioner did not submit any evidence to address the director’s concern that the petitioner had not demonstrated that any of his articles were published in professional or trade publications or other major media.

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

Initially, the petitioner submitted newspaper advertisements and notices announcing his exhibits in California, Singapore, China, and Taiwan. The director requested evidence of the significance of these exhibitions. In response, the petitioner submitted an undated and unsigned letter from Chen-Kuang Chu, Director of the “Center for International Art and Cultural [sic]” in New York stating that the petitioner had previously displayed his work at an exhibition in New York and inviting the petitioner to participate in an exhibition in May of an unspecified year. The petitioner also submitted an undated and unsigned letter referencing a 1991 display of the petitioner’s work in New York. Finally, the petitioner submitted evidence that his work was included in the Modern Chinese Painting Invitational Exhibition at an undisclosed location in an unspecified year. The director concluded that the petitioner had met this criterion.

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

The petitioner submitted verification of his one-year appointment as Assistant President of the Shanghai Ethnic Art Institute in 1997, his appointment as the President of the Wu Changshuo Chinese Paintings’ Association in 1989, his appointment as a guest professor for the China Hu-Nan Painting and Fine Arts Museum on an unspecified date, his job as senior artist and professor of the Shanghai Ethnic Art Institute in 1997, and his job as a researcher for the Zhejiang Chinese Culture Research Institute in 1991. The petitioner also submitted an uncertified translation of materials posted on [www.allworldarts.net](http://www.allworldarts.net) purportedly listing 385 artists, the export of whose work was regulated by the National Relic Bureau. The director concluded that the petitioner had not submitted any evidence to meet this criterion.

On appeal, the petitioner reiterates his claim that the National Relic Bureau regulates the export of his work as a national treasure. He submits a new translation of the list of the artists whose work is regulated, alleging that the list comes from the website of the *People’s Daily*. The newly submitted Chinese language text, however, does not have an Internet address at the bottom. Thus, the petitioner has not established that the original text comes from this major publication’s website.

The petitioner has not established that [www.allworldarts.net](http://www.allworldarts.net) is operated by an official source.<sup>2</sup> The record contains no official information from the National Relics Bureau itself.

The petitioner also references his listing in *World Outstanding Chinese Artists Selection* published by the World-Known Artists Association. As evidence of this, the petitioner submits a list of World Outstanding Chinese Artists as posted on [www.worldchinesearts.com](http://www.worldchinesearts.com). The petitioner has not submitted any evidence regarding the significance of this website.<sup>3</sup> Regardless, this listing does not identify the petitioner as playing a leading or critical role for a specific organization with a distinguished reputation. Such a listing relates more to published material about the petitioner under 8 C.F.R. § 204.5(h)(3)(iii). Appearing as one of thousands, or even hundreds of other successful individuals, however, in a frequently published directory is not evidence of national acclaim. Moreover, "publication" on the Internet does not involve the review process inherent to book publication. In other words, there are no restrictions on who can register a website and no oversight of the veracity of the information posted on the Internet by unofficial sites.

Finally, the petitioner references his positions with the Wu Changshuo Calligraphy and Painting Association and the Shanghai Ethnic Art Institute. While the petitioner has demonstrated his leading or critical roles with these entities, the record contains no independent information regarding either entity. Thus, the petitioner has not established that either entity enjoys a distinguished reputation nationally.

*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 submitted a November 20, 2002 consignment agreement with Montecito Fine Arts setting sale prices for three of his paintings at \$5,412.50 each. The agreement was signed only by the petitioner. The petitioner also submitted photographs of three oil paintings allegedly displayed at the Arcadia Fine Arts Institute in November 2002 and priced at \$15,000. Finally, the petitioner submitted a certificate from the International Artists' Association evaluating the petitioner as a "Famous artist of Ch. Painting," and evaluating his work as worth \$130 per square meter or ¥1100 for each square meter and a "Price Certificate of Paintings & Calligraphy Works" evaluating the petitioner's calligraphy work at between ¥500 and ¥700 and his paintings at between ¥600 and ¥900. The director concluded that the consignment agreement was not signed by a Montecito Fine Arts representative although there was a space for such a signature. The director did not consider the remaining evidence.

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<sup>2</sup> [Http://www.allworldarts.net](http://www.allworldarts.net) is registered to Beijing Shilu World Record Culture Company, Ltd., according to [www.register.com](http://www.register.com). The petitioner has not established that this company is an official source. A search of the Internet could not confirm the existence of a National Relics Bureau and only produced evidence of Chinese regulations on the export of artwork created before 1797 according to [www.artculture.com/n2htm](http://www.artculture.com/n2htm).

<sup>3</sup> As stated above, [www.worldchinesearts.com](http://www.worldchinesearts.com) is registered to "Zhoujian" in Beijing.

On appeal, the petitioner resubmits the November 20, 2002 consignment contract with Montecito Fine Arts, now signed by a gallery representative. The petitioner also submits a job offer dated April 22, 2003, from Montecito Fine Arts School offering the petitioner a position as a Chinese Art Professor for \$58,000 annually. Finally, the petitioner submits a letter from the Super Frame & Art Gallery dated April 25, 2003, certifying that the gallery is an agent for the petitioner and is authorized to sell his oil paintings for not less than \$15,000 per piece for a commission of 25 percent.

The certificate from the International Artists' Association does not establish that the petitioner's works sell for a significantly high amount. First, the petitioner has not submitted evidence that his work sells for the amount at which it was appraised. Second, the petitioner has not established what the top Chinese calligraphy and oil paintings sell for.

Further, the petitioner filed the petition on June 3, 2002. Other than the certificate from the International Artists' Association, none of the remaining documentation in the record relating to this criterion is dated prior to that date. Thus, none of the documentation is evidence of the petitioner's eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Regardless, while the petitioner has authorized his work to be sold for specific prices, the petitioner has not established that any of his work has actually been purchased for those prices. Moreover, the petitioner has not established the top prices for oil paintings in the United States. Thus, the petitioner has not established that these prices are comparable to the prices charged by the top artists in the United States. Finally, the petitioner has not established that \$58,000 annually is a comparably high salary for a top art professor.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

In his final decision, the director noted that while the petitioner had submitted evidence "alluding" to high prices for his artwork, he had not submitted receipts establishing that his work had actually been purchased for those amounts. On appeal, the petitioner submitted an affidavit from Ti Jin Wu. Mr. Wu asserts that he was an agent for the China Affection Monkey Paintings art exhibition organized by the China Wu Changshuo Calligraphy and Painting Association, the Shanghai Ethnic Painting Institute, and the Taipei Huok Artist Company. According to Mr. Wu, he sold 1,318 pieces of the petitioner's work for a total of ¥2,636,000 between October 1991 and December 1992. While the director specifically requested such evidence in support of this criterion, we find that this criterion clearly relates only to the performing arts. We find the evidence submitted relates more to the previous criterion. According to the language of the previous criterion, the petitioner must demonstrate that his remuneration is significantly high in relation to others in the field. The petitioner has not established what paintings from other top Chinese painters sell for. Thus, the petitioner has not established that his compensation for these paintings was significantly high. Moreover, the petitioner did not submit any receipts confirming the assertions of Mr. Wu.

Finally, beyond the specific criteria, we note that the petitioner entered the United States on June 3, 2001 and filed the petition a year later. Thus, in order to demonstrate sustained acclaim at the time of filing, the petitioner would need to demonstrate evidence of some acclaim between June 2001 and June 2002. The record contains no evidence relating to that period of time that is indicative of any acclaim nationally.

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.