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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: WAC 01 287 53246 Office: CALIFORNIA SERVICE CENTER Date: JUN 0 2 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)

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.

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.

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 he has sustained national or international acclaim at the very top level.

The petitioner is an artist, working in the medium of ceramics. Counsel states "Petitioner's ceramic work has been collected by national and international leaders. In China, several pieces of his ceramic works have been acquired by leading politicians because they represent national pottery art. . . . [H]is ceramics are used as prizes for conferences and holiday celebrations in China."

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, he claims, meets the following criteria.

> *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 most persuasive evidence submitted under this criterion consists of newspaper listings, showing that the petitioner was the focus of segments on China Central Television programs, and articles in art journals that discuss the petitioner and showcase his work. Other materials carry less weight, such as local publications and directory-type publications that list hundreds of artists, but those materials do not diminish the weight of the stronger evidence. Some articles about the petitioner appeared in *World Journal*, a Chinese-language newspaper published in the United States. Counsel cites circulation figures in excess of 298,000 copies of *World Journal*, but this is an aggregate total of several local editions. The petitioner's articles appear to have been printed in only one of these local editions.

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

Counsel states:

> Petitioner is unique and distinguished among artists because he has not only created masterful artistic works, but he has also developed several original inventions relating to specialized art techniques and equipment which are of enormous benefit to the field of ceramics art and the greater artistic community in general.
>
> Petitioner works in functional vessel form and realistic sculpture such as fishes, seashells, and skulls of animals, etc.

The petitioner submits letters from witnesses who attest to the significance of the petitioner's work. Professor [redacted] deputy president of the Chinese Ceramics Committee and deputy chairman of the Chinese Center Arts and Crafts College, states:

> [The petitioner] has made rapid progress with great efforts, formed a special style of art and gained favorable comments by both amateurs and experts. . . .
>
> With the increase of age, [the petitioner] showed great interest in ancient buildings and produced a lot of work about them. He put his heart and feeling into such work and aroused the recollection of the people. If you had a chance to see this work, you would have a feeling of desolate, gloomy and also cordial and you would find it's hard to forget it. His work showed his concern about the feelings of the citizenry and his sense of beauty from normal life.

> There is a piece of work [the petitioner] named *Cattle Spirit*, which depicts a broken wooden wheel, rust-eaten nails and cattle bones. The work is like a historical relic, which records the ancient traffic tool and commands the admiration and nostalgia of the viewers.

Professor [redacted] chairman of the San Francisco-based Asia Society of Arts of America, states that the petitioner excels at "catching the traditional cultur[e] of the Chinese nationality" and that the petitioner "has created . . . [numerous] works with profound meanings."[1] These letters reflect the subjective responses of admirers of the petitioner's work, but they do not establish that the petitioner has earned a reputation nationally or internationally as one of China's top ceramic artists.

Designer and sculptor [redacted] states:

> As a fellow artist of renown, I became acquainted with [the petitioner] as we are both natives of Dalian, China. . . . [The petitioner] is recognized as a famous artistic figure in the community, participating in several art festivals and exhibitions. . . . His art can be seen all over town. . . .
>
> As a fellow artist, I have admired [the petitioner's] work for its unique reflection of Chinese cultural history and artistry. He has created totem, figure portraiture, and ocean series of ceramics. Unlike other contemporary pottery artists, [the petitioner] is more adept at capturing and melding traditional local characteristics with novel creativity. . . . The primitive simplicity, elegance, dignity, and grace of [the petitioner's] works express the broadness and profoundness of Chinese ceramics fully.
>
> Singular among artists in general, is [the petitioner's] extraordinary ability to create original artistic inventions relating to his art. In the course of his work, he has designed techniques and kilns used in the creation of ceramic pottery. His innovative kilns are ingenious enhancements and alternatives to traditional methods of firing pottery. . . . Most artists are content to be masters of their art, but [the petitioner] has further contributed by seeking to enhance the field of ceramics with his unique inventions.

The record shows that the petitioner has applied for patents for his kiln, but a patent (or patent application) does not demonstrate the major significance of a given invention. The petitioner has not shown the impact of his invention on ceramic art in China or elsewhere.

The materials submitted show that the petitioner has won admirers in his field, but they do not demonstrate that any specific artistic or technical achievement has been recognized at the national or international level as having major significance to the field.

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[1] The record contains two translations of [redacted] letter. The above excerpts are derived from the translation that bears [redacted] signature.

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

Counsel refers to "publication of [the petitioner's] work in art books and periodicals." Published reproductions of the petitioner's art works are not scholarly articles authored by the petitioner. Reproductions of this kind fall under published material about the alien if published in the context of articles about the petitioner.

The record contains documentation from conferences of the National Council on Education for the Ceramic Arts (NCECA). These documents show that the petitioner attended an NCECA conference and gave a presentation at San Jose State University. The record does not establish the content of the presentation, or that the presentation at San Jose State University had a national rather than local audience. With regard to the NCECA conference, the record establishes only that the petitioner attended the event. A letter from NCECA states that the "annual international slide forum is an opportunity for our foreign guests to participate," but there is no clear evidence that the petitioner participated, or if any such participation went beyond providing slides of his work.

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

Counsel states "Petitioner has had his work displayed in exhibitions and expositions throughout China, the U.S., Japan, Thailand, and Canada. . . . In addition, Petitioner has participated in several cultural art exchanges between China and other countries."

The petitioner submits evidence that his work appeared at the China Art Exposition, the Arts Exchange Exhibition of Sino-Japanese Friendships, and the Tsinghua University International Ceramics Art Exhibition. The China Art Exposition appears, from the evidence submitted, to be more akin to a trade convention than an artistic exhibition. The four-day event involved "up to 400 booths," and "[p]articipants include galleries at home and abroad, artworks dealing companies, fine art institutes, fine art creators, etc." The emphasis, as described in Exposition documents, is more on marketing and "exchange" than on display for its own sake. Museum exhibitions of an artist's work generally remain on display for weeks at a time (if the pieces are not on permanent display); the China Art Exposition lasts only four days a year, which again is more akin to the duration of a trade convention than an artistic exhibition.

The record documents some solo exhibitions by the petitioner, all in his home city of Dalian, despite counsel's reference to exhibitions "throughout China." A local reputation, no matter how firmly established, is not tantamount to national or international acclaim. Several of the international exchange visits appear to have been arranged by Chinese expatriates, such as [redacted] of the Edmonton-Shenyang Friendship Association and [redacted] of the Chinese Ceramic Art Council. Several of these exchanges were city-to-city, apparently somewhat like "sister city" programs, conducted locally rather than at a national level. International visits of this kind do not establish national acclaim in either of the two countries involved.

The petitioner submits "collection certificates" from various entities, showing that various museums and universities have added his work to their permanent collections. The certificates are "form" documents, with blank spaces for the name of the artist and the title of the art work.

While the petitioner has made a name for himself in the Dalian area, and participated in some cultural exchange endeavors, the record does not show that the petitioner is among China's most-exhibited ceramic artists; that his works are routinely shown at the top museums, for the purpose of public display rather than sale; or that his exhibitions attract more attention and viewers than those of most other ceramic artists. The petitioner's exhibitions for the most part have been local, or part of group showings with dozens or hundreds of other artists.

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

Counsel states "Petitioner has achieved phenomenal success as a ceramist and operates the Wenlun Ceramics Shop, where he sells his art work and offers training in ceramics techniques." Counsel adds that "[o]n a recent trip to the U.S., [the petitioner's] ceramic works sold for $3,000 to $5,000 USD a piece." The plain wording of the regulation requires evidence that the petitioner's remuneration is "significantly high . . . in relation to others in the field." It cannot suffice simply to state the petitioner's earnings, without evidence that those earnings exceed those of almost all other ceramic artists in the countries where the art works were sold.

Furthermore, the record contains no evidence to support the petitioner's claim that his works sold for three to five thousand dollars apiece in the United States. The record contains only a statement from the petitioner, asserting such to be the case. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner asserts "[e]ach piece of my work sells at a price around 20,000 yuan in China." The only evidence submitted to establish the price of the petitioner's work in China consists of a series of receipts, indicating that the petitioner's works sold at prices ranging from 2,000 to 36,000 yuan. The receipts document the sale of 40 items, only two of which sold for more than 20,000 yuan. More than half of the items sold for 5,000 yuan or less; 32 out of the 40 items, or four-fifths of the items listed, sold for under 10,000 yuan. This data is not consistent with the petitioner's claim that "each piece" commands "around 20,000 yuan."

The petitioner submits a copy of a contract with artist [redacted] obligating the petitioner to create art works for Mr. [redacted] for a flat salary of $3,500 per month, or $42,000 per year. The petitioner has not shown that only the nation's top artists earn this amount. We also note that the prices commanded by the petitioner's works are not necessarily equal to the petitioner's remuneration for services. For instance, if the petitioner provides art works to [redacted] at wholesale prices, and Mr. [redacted] sells the work at a higher retail price and keeps the difference, then the petitioner's remuneration is only the amount paid to him by Mr. [redacted], not the full retail price paid for the work.

On March 4, 2002, the director, citing deficiencies in the initial submission, instructed the petitioner to submit additional evidence. In response, the petitioner submits documents showing that two of his patent applications were approved in early 2002. As noted above, patents establish the originality of inventions but not their major significance. Counsel states that several manufacturers have expressed an interest in the petitioner's inventions. The petitioner submits letters from these manufacturers. At least one of these letters appears to be a "form" letter issued to holders of newly approved patents. All of the letters that show dates are dated late March 2002, months after the filing date and weeks after the director's request for evidence, and they all refer to the patent approvals which did not take place until several months after the petition's September 13, 2001 filing date.

Aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971). The above documents, and most of the other documents newly submitted in response to the director's request, did not exist prior to the filing date, and refer to developments that took place after the filing date.

Regarding the petitioner's media coverage, counsel asserts that the director applied too strict a standard by requiring that the articles critique the petitioner's work. Counsel's objection is reasonable. As noted above, we find that the petitioner has satisfied the criterion regarding published material about the alien.

Counsel states that evidence of the petitioner's remuneration "should be considered within the appropriate context, that is, in relation to other ceramic artists in China." We agree with this statement, but because the record is entirely devoid of evidence establishing the remuneration of other ceramic artists in China, we cannot conclude that the petitioner's earnings exceed those of others in that field. Counsel's assertion that "the level and sale of [the petitioner's] artwork is considered significantly high remuneration" cannot suffice. 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).

Beyond the evidentiary criteria, counsel cites "comparable evidence" of acclaim. 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence." That regulation reads, in full: "[i]f the above standards [i.e., the ten criteria outlined in 8 C.F.R. § 204.5(h)(3)] do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." As its plain wording shows, the "comparable evidence" clause is triggered only when the ten regulatory criteria "do not readily apply to the beneficiary's occupation." The regulation does not indicate or imply that an alien can rely on "comparable evidence" when the standard criteria do, in fact, readily apply to the occupation but the alien is personally unable to meet them.

In this instance, the "comparable evidence" includes the title "senior master in ceramic sculpture technique," which the petitioner earned in 1999, as well as various certificates presented to the petitioner. With regard to the petitioner's senior master ranking, the record shows that senior

masters indeed represent only one tenth of one percent of certified workers in the petitioner's field, but the record also shows that promotion through the various ranks is through tests. For the tests to advance from one rank to the next, the passing rate averages 86.5%. For senior masters, the passing rate is 69.4%. These certifications appear to be, in effect, professional credentials. The "comparable evidence" also includes several certificates issued to the petitioner after the petition's filing date, and in some instances after the petitioner received the director's request for further evidence.

The director denied the petition, finding that the petitioner has not met any of the ten regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). The director analyzed the evidence submitted under the various criteria claimed, finding for instance that it is unacceptably broad to assert that every artist who has ever shown his or her work satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(vii) pertaining to display at artistic exhibitions or showcases. On appeal, counsel argues that the director "failed to look at the evidence in its totality, especially in light of the nature of the ceramic arts field." Counsel maintains that the petitioner has satisfied four of the regulatory criteria.

Counsel argues that the director relied on an overly strict interpretation of the regulations in finding that the petitioner has not satisfied the criterion relating to published materials about the alien. The petitioner submits a compact disc of various broadcast programs. Upon careful consideration of the record, we concur with counsel that the petitioner does appear to have been the subject of sufficient national media coverage to satisfy the relevant criterion.

With regard to the petitioner's claimed contributions of major significance, counsel focuses on the petitioner's now-patented inventions. The record, however, does not establish the significance of these inventions. Counsel stresses that the petitioner's work has "garner[ed] attention from companies and organizations interested in his inventions," but this demonstrates only that the companies consider the inventions to be economically viable. Introducing a new product is not automatically a contribution of major significance. The petitioner has not shown that his inventions are in heavy use or great demand at a national or international level. Furthermore, as noted above, the evidence regarding the petitioner's patents and corporate interest in the inventions (including additional evidence submitted on appeal) dates from after the petition's filing date.

Counsel repeats or elaborates upon prior arguments, for instance asserting that the petitioner's senior master certification requires "a level of extraordinary skill" and is available only to the top tenth of one percent of China's ceramic artists. The certificate, issued by a provincial labor authority rather than by any national body, shows that the petitioner has reached the highest occupational rank, but it also shows that the rank is obtained in part through an examination which seven out of ten candidates pass. This rank reflects highly on the petitioner's skills in his art, but we cannot assume that all 3,136 senior masters are nationally known or acclaimed.

Counsel asserts that the petitioner's exhibitions and presentations, when viewed together, establish the petitioner's expertise and recognition within the field. As already discussed,

however, the individual aspects of this claim do not establish national or international acclaim, and they do not become more persuasive when considered as an aggregate whole. The petitioner has earned some respect and recognition as an artist and educator, but the record tends to show a dissipation of the petitioner's reputation away from Dalian or specific groups with which the petitioner has been involved.

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 a ceramic 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.