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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

MAR 28 2003

File: WAC-01-257-60981 Office: California Service Center Date:

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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 Bureau 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 she 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, she claims,

meets the following criteria. In evaluating the evidence, the Bureau must determine whether the evidence is indicative of national or international acclaim.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a photograph of a ribbon from the 1992 Villeurbanne Apovian for [redacted] exposition." The petitioner also submitted photographs of medals alleged to be awarded by the Art Exhibition in Yerevan in 1991 for Best Art Work, by the Art Foundation of Armenia in 1987 for Outstanding Junior Artist of Armenia, and by the University of Arts and Theater in Yerevan for Best Artist as a first year student in 1986.

A letter from [redacted] Auction Manager at Valley Public Television, indicates that the station "declared [the petitioner] a winner" during the 1998 Great TV Auction. The record contains a certificate from the station congratulating the petitioner for her "donation" of art to the 1998 Great TV Auction and a first place ribbon from the Great TV Auction for the Valley.

The petitioner also submitted a certificate of achievement from the Ministry of Education of Armenia in recognition for outstanding work as a teacher.

The director concluded that the petitioner had not submitted any evidence to meet this criterion. On appeal, the petitioner notes that she submitted the above evidence. We believe that such evidence warrants some discussion.

While the petitioner submitted no evidence regarding the significance of the above awards, the 1986 and 1987 Armenian prizes appear to be junior level and student awards. Thus, the petitioner did not compete with experienced artists for those awards. The 1991 Armenian award does not appear to be a junior or student award. Nevertheless, the petitioner did not submit any evidence regarding the significance of this award, such as the number of competitors, their origin, and any media coverage of the event. Thus, the petitioner has not established that the 1991 award was a recognized national award. Similarly, the petitioner has not established that the Villeurbanne award is a recognized national award.

Finally, the record strongly suggests that the Valley Public Television award was purely local. The materials from the station reference a goal of providing a wider exposure for local artists. Thus, this award is not a recognized national award for which expert artists from around the United States compete. Moreover, it only provided exposure within the Valley. Thus, the award is not evidence of the petitioner's national or international acclaim.

In light of the above, the petitioner's awards cannot serve to meet 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.

The petitioner submitted membership identification for the Union of Artists of the USSR. Once again, the director concluded that the petitioner did not submit any evidence to meet this criterion. The petitioner does not challenge that conclusion on appeal. Some discussion, however, of the petitioner's union membership is warranted. In general, union membership is based on participation in the field. Unions generally do not require outstanding achievements of their members. The petitioner has not demonstrated that the Union of Artists of the USSR has particularly exclusive membership requirements. Thus, the membership cannot serve to meet this criterion.

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

The petitioner submitted several articles in various newspapers. The director concluded that the articles were insufficient as the petitioner had not demonstrated that the publications are major media "as well as international in scope." We disagree that the petitioner need demonstrate an international circulation as the petitioner need only demonstrate national acclaim. Nevertheless, we will consider whether the new evidence submitted on appeal establishes that the articles appeared in major media.

The petitioner submitted articles about the Great TV Auction, the petitioner-founded First Armenian Presbyterian Church (FAPC) Art Institute's first anniversary exhibition in the church's auditorium, and the petitioner's student's honors from the Los Angeles Children's Museum in the *Fresno Bee*. While some of the articles mention the petitioner, the articles are not primarily about her. On appeal, the petitioner submits evidence that the publication has a circulation of 157,758 households. The evidence does not, however, indicate that the paper has a national or international circulation. Rather, it appears to be a purely local publication. Regardless, as stated above, the articles are not primarily about the petitioner.

An article in *The California Courier* reports the inclusion of Armenians in the Los Angeles Children's Museum's celebration of Jerusalem's 3,000 birthday. The article does not even mention the petitioner by name and cannot be considered evidence of her acclaim. A second article in the same publication reports on the FAPC Art Institute's first anniversary celebration. The article appears to be a press release forwarded to the press to promote the event. A similar article appears in an unidentified publication. On appeal, the petitioner submits an unsigned letter from [redacted] editor of the *California Courier*, asserting that the publication has an international circulation of 4,500. Such a circulation, even if international, is minimal and the publication cannot be considered major media. Regardless, press releases that are not the result of independent journalistic reportage are not evidence of the petitioner's national acclaim.

The petitioner also submitted an article about the premiere of the television show "Hye Talk," produced by the Armenian Studies Program at Fresno State. The petitioner was a guest on this show. Once again, the article is primarily about the show, not the petitioner, although she is pictured as a guest. Moreover, the record does not establish the circulation of the publication that printed the article, although it appears to be a publication dedicated to Armenian issues. Further, the petitioner submitted a videotape of her appearance on "Hye Talk." The host indicated that it is a program for the Fresno Community on Armenian Issues. The record does not reflect that the program was broadcast beyond the Fresno area. Thus, it is not evidence of the petitioner's national acclaim.

The petitioner also submitted articles about her exhibitions, classes, and students in the *Armenian Reporter, International*. The articles appear in the "Mixed Regional News" and "California News" sections. On appeal, the petitioner submits evidence that the *Armenian Reporter, International* is the leading Armenian weekly newspaper in the United States and sells in Armenia, Switzerland, France and England. An unsigned letter from [redacted] the managing editor, asserts that the publication has 20,000 readers, mostly in the United States, but also in Canada, France, the United Kingdom, Norway, Switzerland, Holland, Germany, Austria, Italy, Spain, Lebanon, Armenia, Israel, Greece, Argentina, Ireland, Egypt, Syria, Sweden, Iran, Bulgaria, Jordan, Australia, Cyprus, Uruguay, China, Mexico, Turkey, Arab Emirates, Portugal, Saudi Arabia, Brazil, and Russia. It is not clear, however, that the regional and California sections of the publication are included in the national and international versions of the paper, especially as the paper is based in New York. Thus, it is not clear that the articles submitted were circulated nationally or internationally. Moreover, the publication is not aimed at the general public in most of the countries where it is circulated, but the Armenian population. The petitioner must demonstrate sustained national or international acclaim. She has resided in the United States since 1993, nearly eight years prior to the filing date of the petition. The petitioner has not established that articles in a publication aimed at Armenians are evidence of the petitioner's national acclaim in the United States beyond the Armenian community.

In addition, the record includes an article about the opening of the FAPC Art Institute in *Hye Sharzhoom*. An article reporting on the FAPC Art Institute's first anniversary appears in the *Armenian Observer*. The petitioner did not submit any evidence regarding the circulation of these publications.

In general, the coverage of the petitioner in the media at best suggests that she has local recognition, mostly among the Armenian community. For the reasons discussed above, such coverage is not evidence of national acclaim.

On appeal, the petitioner submits a contract with AAA Publishing House to publish 1,000 copies of a 144-page book of her art. The contract is dated August 8, 2002. First, the petitioner has not demonstrated that the contract represents a publisher seeking to make a profit by publishing the work of an acclaimed artist. The contract price is $23,000 for the printing, with no evidence that the publisher will receive any proceeds of the sales. Thus, the company appears to be a publishing company that will print copies of any book for a price, rather than a publisher that chooses what it

will publish and hopes to earn a profit on the proceeds of book sales. Moreover, the petitioner has not established that a printing of 1,000 copies of a book is significant. Finally, the contract is dated well after the date of filing. Thus, the contract is not evidence of the petitioner's eligibility when the petition was filed.

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 director concluded that the petitioner had not submitted any evidence to meet this criterion. The petitioner does not challenge this conclusion on appeal. We note, however, that initially the petitioner claimed that "since 1990" she was invited to participate as a judge for many art exhibitions in Armenia and was also chosen as a member of the jury for entry examinations of young artists to art school. The record contains no evidence to support these assertions. Thus, we concur with the director.

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

The director concluded that the record did not contain evidence relating to the criterion. On appeal, the petitioner asserts that the success of her students at the art school she founded and her volunteer work fulfill this criterion. We will consider the reference letters addressing those accomplishments, considered by the director as alternative evidence pursuant to 8 C.F.R. § 204.5(h)(4).

Tamara Oganisyan, owner of Le Vernissage Gallery of Fine Art, asserts that the petitioner is "very promising," with "extraordinary talent and a very bright future." She does not explain how the petitioner compares with the top artists in the United States or provide examples of her contributions to the field of art.

Several reference letters and newspaper articles confirm that the petitioner founded the First Armenian Presbyterian Church (FAPC) Art Institute. Reverend [redacted] senior pastor at the church, asserts that FAPC has fifty students. He continues that the church is considering publishing a book about the students' work. [redacted] an FAPC Art Institute board member, asserts that the petitioner encourages her students to enter contests and that she arranges for their work to be exhibited. [redacted] a staff psychiatrist at Fresno's Veterans Administration mental health clinic, asserts that he has observed the petitioner teaching art. He provides general praise of her teaching abilities in general and her ability to reach emotionally disturbed children. [redacted] the executive director for the Fresno Arts Council, asserts that the petitioner's students have won honors in statewide competitions and that their work was part of an exhibit sponsored by the Children's Museum of Los Angeles. [redacted] continues that the petitioner volunteers at the Valley Children's hospital, providing art experiences for all ages.

[redacted] Chief Executive Officer of the California Assembly of Local Arts Agencies, asserts that the petitioner's "dedication to children, her artistic and spiritual leadership, her superb

contributions to Armenian cultural lineage and her superb artistic works are superb contributions to our society," and "are an essential part of California's diverse cultural treasures."

[redacted] Mayor of Fresno, asserts that the petitioner has contributed culturally to the City of Fresno. He continues that his wife has attended the petitioner's exhibits and is impressed with her art and work with children. U.S. Congressman George Radanovich also asserts that the petitioner is contributing to the Fresno community.

The above letters suggest that the petitioner has provided valuable art training and exhibition opportunities to her students within California. The letters do not, however, establish that the petitioner has made a contribution of major significance to the field of art as a whole. There is no evidence that the FAPC Art Institute has attracted any attention nationwide or altered the way art is taught or practiced.

The petitioner also submits a list of quotes allegedly from art critics. The record does not contain the source of these quotes. Moreover, they are from experts in Armenia. If the quotes were originally in Armenian, the petitioner would need to provide a certified translation in addition to the original text pursuant to 8 C.F.R. § 103.2(b)(3). The list of quotes does not include a certification from a translator.

The most significant letter is from [redacted] Senior Policy Advisor and Director, Folk and Traditional Arts at the National Endowment for the Arts. [redacted] claims to have observed the petitioner's work and become "aware of the growing acclaim for her work in this country as her reputation spreads." [redacted] asserts that the petitioner's exhibitions have been supported with federal funds, "confirming widespread approval of her creations." [redacted] acknowledges, however, that the National Endowment for the Arts (NEA) is prohibited from offering an official position on the issue of the petitioner's eligibility as an alien of extraordinary ability. Thus, [redacted] opinion is not the opinion of the NEA. Moreover, [redacted] provides no examples of how the petitioner's acclaim has spread outside the Fresno area or the State of California. Nor does [redacted] identify the federal program that funded the petitioner's exhibitions and explain the significance of that program.

Finally, while commendable, volunteer work is not a contribution to the field of art such that the field of art has been changed or that other artists nationally have been influenced by the petitioner's style.

In light of the above, the petitioner has not established that her work at the FAPC school or volunteer activities have influenced the field of art such that her work can be considered a contribution of major significance to the field of art.

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

The director concluded that the petitioner does not claim to meet this criterion. The petitioner does not challenge that assertion on appeal and we concur with the director.

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

The director concluded that the petitioner had not established the significance of her exhibitions. On appeal, the petitioner asserts that she provided evidence of numerous exhibitions at very prestigious galleries and facilities. We will consider the evidence.

The petitioner has exhibited her work at her church, where she also founded an art "institute." Displaying one's work at one's own church is not evidence of national or international recognition, let alone acclaim.

[redacted] owner of Le Vernissage Gallery of Fine Art in Carmel, California, asserts that she is successfully exhibiting the petitioner's art in her gallery. The Fresno Arts Council asserts that the council presented the petitioner's work at Fresno City Hall in November 1994 and that the *Fresno Bee* showcased the exhibit.

The petitioner also submitted evidence that she exhibited her work at Gladia's Gallery in Old Town Clovis as part of an Artists in Residence Series and at a St. Gregory Ladies Society of Fowler luncheon.

Valley Public Television displayed the petitioner's work on its 1998 Great TV Auction and invited the petitioner to enter two art pieces in a Traveling Art Show, offering "the chance to display and sell your works of art while gaining exposure throughout the valley." The work would be displayed in the Art Works Gallery, the Kern County Office Building, and Gallery 25, all apparently within San Joaquin Valley.

The above exhibits were all in the Fresno/San Joaquin Valley area and do not demonstrate that the petitioner has any recognition outside that area. In response to the director's request for additional documentation, the petitioner submitted a letter from [redacted], proprietor of Sasoontsi Gallery, asserting that the gallery is in negotiations with the petitioner to exhibit her work at the gallery in Salinas, California. This gallery is also within California. Moreover, the exhibition had yet to occur at the time of filing and cannot establish the petitioner's eligibility at that time. Finally, we note that any successful artist must exhibit her art in order to sell it. Typical exhibitions at galleries for the sale of art by local artists are not evidence of national or international acclaim.

[redacted] Director of the [redacted] Fine Art/Zephyrus Arts Gallery in Poughkeepsie, New York, asserts that he has met the petitioner on his visits to California and that his gallery is interested in exhibiting the petitioner's work. Regarding her ability, he states, "her

work has shown significant maturation from earlier paintings to what she is now producing." Once again, the petitioner had yet to exhibit her work in New York at the time the petition was filed.

The petitioner submitted a brochure in a foreign language that includes a brief biographic synopsis. The petitioner submitted an uncertified translation of the biographic synopsis, asserting that the petitioner exhibited her work in Leningrad, Beirut, France and Armenia. The petitioner submitted a flier for a 1992 exhibit in Villeurbanne and a ribbon from that exhibition. The record does not establish the significance of these exhibits. Moreover, the petitioner must establish sustained national acclaim. As stated above, the petitioner has resided in the United States since 1993, nearly eight years before the petition was filed. Thus, the petitioner must establish continued national acclaim during those eight years.

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

The director concluded that the petitioner had not submitted evidence relating to this criterion. On appeal, the petitioner refers to her volunteer work with children at Valley Children's Hospital and for Exceptional Parent Unlimited. While volunteering for an organization is commendable, it is not the type of leading or critical role contemplated by the regulation such that it is evidence of national acclaim. Most hospitals benefit from and actively seek volunteers, regardless of any acclaim the volunteer may have.

While not argued by the petitioner, we will consider that she founded the FAPC Art Institute and is the principal. While she performs a leading role for this institute, the petitioner has not established that the institute, which has few teachers (if any beyond the petitioner) and forty to fifty students has a distinguished reputation nationally. While four of the students have received local honors, such local recognition is not necessarily evidence of a distinguished reputation nationally. The petitioner has not established that any student has won national awards such that the institute now draws students from around the United States.

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

The petitioner submits her bank statements and evidence of the sale of her paintings. The director concluded that the petitioner could not meet this criterion without comparative evidence of the compensation received by the top artists in the United States.

On appeal, the petitioner submits evidence from auctions regarding the sale of other artistic works, including one by [redacted] reflecting prices up to $10,000. The petitioner submits checks to herself for over $9,000. While [redacted] is obviously an artist of international renown, the acclaim enjoyed by the other artists is unknown. Regardless, that the petitioner was able to locate individual pieces of art being auctioned for similar prices to what she herself charges is insufficient.[1] The

[1] For example, according to www.famousartreproductions.com/factsaboutart/html, the most

petitioner has still not established that she receives compensation comparable to what the top artists in the United States currently charge for their own work.

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

As this criterion does not relate to the petitioner's field, we concur with the director that the record does not contain evidence relating to this criterion.

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 an artist 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 indicates that the petitioner shows talent as an artist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

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money paid for a Picasso was $55.6 million for "Femme aux bras croises."