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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC 02 175 52768 Office: CALIFORNIA SERVICE CENTER Date: MAY 29 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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 a painter. 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, in his initial submission, did not clearly specify which of the regulatory criteria he claims to have satisfied. The evidence submitted appears to fall most readily under 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 petitioner submits copies of several newspaper articles. Some of the articles mention the petitioner only in passing and are not "about the alien" in any meaningful sense. Others devote more attention to him. An article from *Kanch*, November 15, 1995, refers to the petitioner as "already a well known painting artist" and "established personality." A January 22, 1997 article in *Aravot* discusses the petitioner's art and features several quotations from him.

An article in the November 19-25 issue of the English-language newspaper *The Cyprus Weekly* discusses the opening of several local art exhibitions. A segment of this article indicates that the petitioner "is the main artist in an exhibition which also includes two Armenian and three Russian artists at the Russian Cultural Centre, Nicosia." The Russian-language *Sputnik* mentions this same exhibition and indicates that the petitioner's "pictures occupy an honorable place at a number of museums and private collections around the world." The record contains a translation of a December 1999 article from *Hayatsk*, described as "an Armenian periodical in Cyprus," describing the same exhibition, but the original article is missing from the record.

The English-language *Armenian Reporter International* reported a two-day exhibition of the petitioner's works at the Tekeyan Cultural Association's Beshgueturian Gallery in Altadena, California in August 2001.

The petitioner submits no background material to show that any of the above publications constitute major media that would afford him coverage at a national or international, rather than local, level. Local newspaper coverage of upcoming art exhibitions is routine, rather than a privilege reserved for a small number of elite artists.

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

Fliers and newspaper articles document group and solo exhibitions that included the petitioner's paintings. These exhibitions took place in Russia, Armenia, Switzerland, Cyprus, Canada, and the United States. Most of the petitioner's exhibitions outside of Armenia have taken place at Armenian cultural centers. [redacted] director of Amt für Kulture, St. Gallen, Switzerland, states that the petitioner "was invited to exhibit his artwork in Switzerland by the Cultural Department of the Cantonal Government of St. Gallen. The four exhibitions successfully took place in the cities of St. Gallen, Basel, Lugano and Geneva between February and May of 1993, and were well covered by press, radio and TV." The record does not document the extent of this media coverage. The record also does not indicate whether these exhibitions were museum-type shows, in which the works are displayed solely for public viewing, or the more common gallery shows in which the display is intended to facilitate the sale of the art works.

Beyond the above criteria, the petitioner submits several letters from individuals who have purchased his paintings and from various organizations. Several of these letters, labeled "character references," consist primarily of subjective assessments and general assertions. For instance, K.A. Abrahamian of the Center for Young Painters – Armenians, for instance, states that the petitioner's "paintings are being exhibited in many museums and private collections in Russia, Europe, Scandinavian countries, Asia and American continent. In the course of this time he got a great number of diploma[s] and awards. He has obtained the recognition of the Center." The letters indicate that the petitioner's works are widely shown and collected but they provide no specific details. Similarly, the vague references to unidentified awards are not corroborated by any first-hand documentation or other evidence.

The director instructed the petitioner to submit additional evidence, including documentation to establish the significance of the published material and artistic exhibitions discussed above. In response, the petitioner has submitted additional letters, photographs, and promotional materials.

[redacted], executive director of the Armenian General Benevolent Union of Canada, states:

> [The petitioner] is recognized as a fine artist in Armenia as well as other cities all over the world.
>
> [The petitioner's] work is also very well known in Toronto. His paintings were part of exhibitions organized by the Armenian General Benevolent Union of Toronto, in 1999 and 2001. Also, at the City Hall of Toronto, when his Holiness Karekin II, Supreme Patriarch and Catholicos of All Armenians visited North America.

This letter contains the general assertion that the petitioner has an international reputation, but the record indicates that the petitioner's reputation outside Armenia is largely limited to enclaves of Armenian expatriates. The record does not contain sufficient evidence to permit the conclusion that the petitioner is among the best-known artists within Armenia itself.

The petitioner submits letters from several individuals who had commissioned portraits or bought paintings from the petitioner. These individuals are clearly sincere in their praise for the petitioner's work, but testimonials from a handful of satisfied clients cannot establish that the petitioner is nationally or internationally acclaimed at the top of his field. The petitioner also submits letters from several gallery owners in and near Glendale, California, which is home to a substantial Armenian population. Finally, the petitioner submits a flier for an "exhibit-sale of the works presented by Armenian painters and sculptors residing in Los Angeles," to take place at Yepremyan Hall in Glendale.

The director denied the petition, noting that the petitioner's newspaper articles "appear to originate from regional and/or local newspapers" and that the letters from art buyers do not

establish that the petitioner is among the highest-paid or most commercially successful artists in Armenia or elsewhere. The director did find, however, that the petitioner's "artwork has been displayed in national exhibits." On appeal, the petitioner submits additional documents and letters.

Some of the documents submitted on appeal address the petitioner's participation in various art shows and exhibitions, although the director had indicated that the petitioner's evidence was already sufficient in that respect. For instance, the petitioner submits documentation showing that 16 of his works are in the collection of the National Gallery of Armenia, and that the Yerevan Modern Art Museum purchased three of his paintings "with the purpose of constant exhibition."

The petitioner submits additional published materials which repeat, rather than remedy, the shortcomings that the director had observed regarding the previously submitted published materials. The petitioner also submits letters from Armenians in southern California who assert that they, and the petitioner, are recognized around the world as famous artists.

Other submissions on appeal appear to be intended to satisfy previously unclaimed criteria:

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

The petitioner received a certificate in 1995 from the mayor of Naberezhnye Chelny in Tatarstan. This certificate is a local honor rather than a national or international one.

In 1984 (when Armenia was a constituent Soviet republic rather than an independent nation), the petitioner received a "Certificate of Outstanding Achievement" from the Armenian Leninist Communist Youth Party, in recognition "for his distinguished contribution to the Republican Youth Exhibition titled 'Peace on Earth.'" The record does not reveal the nature of this contribution.

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

The petitioner submits a copy of his "International Identity Card for Professional Artists," issued by the International Association of Art (IAA). A membership application in the record indicates that "[m]embership of the IAA is open to professional artists only in conjunction with membership of the National Association for the Visual Arts" (NAVA), but this application form is from Australia. The record does not show that artists outside of Australia must be NAVA members to be IAA members. Prospective NAVA members must meet one of various criteria, one of which is possession of "professional qualifications in visual art," and another of which is "earns income from sales of art work."

The petitioner also submits documentation of his membership in the Armenian Painters' Union and the Armenian Artists Association, but nothing to establish that either association requires outstanding achievements of its members.

The record shows that the petitioner has had a successful career in the arts, but it does not establish that the petitioner has achieved, and sustained, national or international acclaim at the very top of his field. Since his arrival in the United States, the petitioner's reputation appears to have been largely confined to the Armenian community in southern California.

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 painter 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 consistently 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.