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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 I Street, N.W.
Washington, D.C. 20536



File: WAC 01 240 56974 Office: California Service Center

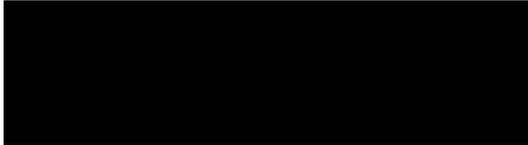
Date: **NOV 19 2003**

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)

IN BEHALF OF PETITIONER:



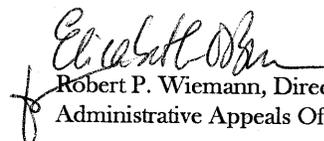
INSTRUCTIONS:

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.


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 regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on April 30, 2001, seeks to classify the petitioner as an alien with extraordinary ability as an artist (oil painting and water-color painting). The statute and regulations require the petitioner's acclaim to be sustained. Documentation in the record reflects that the petitioner has been living and working in the United States since 1989. However, as noted by the director, almost all of the evidence presented under the regulatory criteria pertains to events in China and Japan during the 1980's. The director concluded, therefore, that the petitioner had "not achieved sustained national or international acclaim." On appeal, counsel addresses this issue, stating:

The United States of America is an alien and harsh land for the petitioner. In recent years, the petitioner is making a living through other means, though his love for the painting art never fades. The petitioner believes that he is still young and will certainly substantially benefit the United States in the field of his endeavor when condition matures.

It should be emphasized that the petitioner has been present in this country for well over a decade. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is certainly reasonable to expect him to have earned sustained national acclaim as an artist in the United States during that time. The petitioner has had ample time to establish a reputation in this country.

We further note that the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise." If the petitioner has been "making a living through other means" here in the United States since his 1989 arrival, then it is not apparent how employment as an artist will become his primary occupation and source of income in the U.S. Because the petitioner seeks an employment-based immigrant classification based on his ability as an artist, it is reasonable to require clear evidence that the petitioner will continue to support himself principally as an artist (rather than painting in his spare time while supporting himself through unrelated employment). The evidence now in the record, a single job offer letter from a small local art gallery, fails to clearly establish that the petitioner will continue to support himself primarily through his skills as an artist after gaining U.S. lawful permanent resident status.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

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

We withdraw the director's finding that the petitioner's evidence satisfies this criterion. The petitioner submitted the following evidence (with accompanying English language translations):

A certificate from the Chinese Ministry of Culture (1988) stating that the petitioner's painting "Angel" won "first prize at the China Nanfang Best Paintings and Calligraphies Show."

A certificate from the Chinese Ministry of Culture (1987) stating that the petitioner's painting "Melody" won the "Special Honor Prize at the China Folklore Painting Show."

A certificate from the China Artistic Creation Association (1987) stating that the petitioner's painting "Rest" won the "Super-Class Prize of the China Artistic Creation Award Show."

A certificate from the Chinese Artists Association (1986) stating that the petitioner's painting "Peace in Dust" won "first prize at the Nationwide Young Artists' Works Show."

A certificate from the Chinese Artists Association (1984) stating that the petitioner won the "Special Honor Prize at the China National Young Artists' Works Show."

The significance and importance of the awards presented under this criterion are not self-evident. The petitioner must submit documentary evidence showing the degree of recognition accorded to his awards. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide sufficient evidence to establish that his awards enjoy significant national or international stature. In this case, the petitioner has not shown that his awards earned significant recognition beyond the context of the events where they were presented. For example, the record contains no evidence of national media coverage pertaining to the above awards.

Two witnesses, Haiguang Liu, Department of Complaints, Chinese Ministry of Culture, and Tian Ye, Deputy Director of Archive Department, Chinese Artists Association, offer some general information about the awards which the petitioner has won. The available evidence, however, is not sufficient to allow the conclusion that the petitioner has won the most prestigious national prizes in Chinese art.

Finally, we note that the record contains no evidence indicating that the petitioner has won any significant national or international awards subsequent to his 1989 arrival in the United States. Without such evidence, it has not been shown that the petitioner has sustained whatever previous acclaim he may have held in China.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. In addition, a membership in an association that evaluates its membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submits evidence of his membership in the Chinese Artists Association ("CAA"), the Chinese Association for Traditional Chinese Painting Association, the Sino-Foreign Culture Exchange Association, and the Chinese National Culture Association. The record, however, contains no evidence of their membership bylaws or documentation showing that the petitioner has remained active in these associations since 1992. The letter from Tian Ye notes that artists whose works were "selected for exhibition... on the provincial level for at least five times" are eligible for membership in the CAA. Tian Ye's letter offers no information concerning the petitioner's other memberships. In this

case, we find the documentation presented does not establish that the associations in which the petitioner holds membership required outstanding achievement or that he was evaluated by recognized national or international experts in consideration of his membership.

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.

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

The petitioner submitted a total of nine newspaper clippings under this criterion. Eight of the articles were published in Japanese newspapers between 1988 and 1990.¹ These articles appear to be local in nature and refer to the petitioner as a "student from China." Because the statute and regulations demand *sustained* national or international acclaim, the petitioner must establish that he has been the subject of regular coverage in major national or international publications up until the filing date of the petition. The record, however, contains evidence of only one newspaper clipping published subsequent to 1990. That clipping, from October 1997, appeared in the Chinese newspaper *Labor Daily* and pictured one of the petitioner's works in the upper right hand corner of its essay page. No discussion of the petitioner or his artwork was included in the *Labor Daily*, nor did the petitioner respond to the director's request for additional evidence regarding that publication.

For the above stated reasons, we conclude that the evidence presented fails to demonstrate the petitioner has earned sustained national attention from major media in Japan, China, or the United States.

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

We withdraw the director's finding that the petitioner's evidence satisfies this criterion. Documentation in the record indicates that several of the "exhibitions" showing the petitioner's work were intended to facilitate the sale of his artwork. Display of the petitioner's work for purposes of sale carries significantly less weight than does museum display, strictly for the

¹ The director's decision erroneously stated that an article from Ise News (exhibit 22) entitled "From Art to Friendship" was from 2002; however, a closer examination of the article indicates that it was actually from November 30, 1988 (rather than November 30, 2002 as indicated on the petitioner's exhibit list).

purposes of public viewing. To hold otherwise would be to qualify every artist who allows his or her work to be seen prior to purchase, thus defeating the restrictive purpose behind this criterion. The record indicates that the petitioner often displayed his work among dozens of other artists; however, it has not been shown that these other artists enjoyed national or international reputations. Contrary to counsel's assertion, the petitioner has not submitted evidence to demonstrate his participation in a large number of shows or exhibitions devoted solely or largely to the display of his work alone. We find the petitioner has not shown that his exhibitions enjoy a national or international reputation or that participation in his exhibitions was a privilege extended to only top artists in his field. Nor has the petitioner provided evidence showing his regular participation in top art exhibitions here in the United States.

For the reasons discussed above, the record falls short of demonstrating the petitioner's acclaim in China and Japan, and it contains no evidence that the petitioner has sustained whatever acclaim he may have earned in those countries subsequent to his arrival in the United States more than a decade ago.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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.