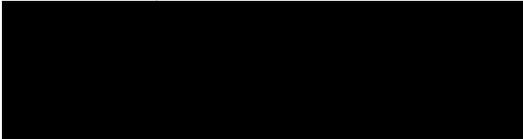


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

*B* 

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



**NOV 19 2003**

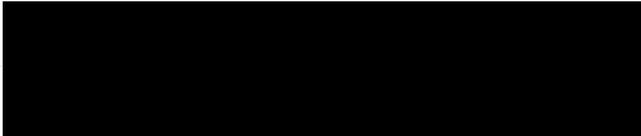
File: WAC 01 282 51713 Office: California Service Center Date:

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)

IN BEHALF OF PETITIONER:



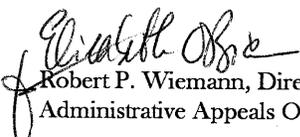
**INSTRUCTIONS:**

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 August 27, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a designer and maker of kites. 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 1997. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation in this country.

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.*

The petitioner submitted the following evidence (with accompanying English language translations):

A certificate from the 5<sup>th</sup> Weifang International Kite Competition stating that the petitioner "won the first prize of large soft linked kite." (1988)

Two "credit diplomas" from the 10<sup>th</sup> Weifang International Kite Festival stating that the petitioner won the "Top Ten Masterpiece Prize" and "First Innovation Prize." (1993)

A plaque stating that the petitioner received first prize in the "Domestic Group Skill Contest" at the 11<sup>th</sup> Weifang International Kite Festival. (1994)

A bronze and two gold medals from the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Weifang International Kite Contests for unknown award categories. (1995, 1996, 1997)

The significance and importance of the above awards are not self-evident. It should be emphasized that the petitioner must submit documentary evidence showing the degree of recognition accorded to his awards. The evidence provided does not indicate the total number of awards presented at each event, how many other individuals directly competed against the petitioner, or the criteria used in determining winners under a specific category. Large-scale competitions typically issue event programs listing all of the entrants and the name of each award category. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his/her category. The petitioner, however, has provided no such evidence for any of his competitions. 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 the awards presented under this criterion enjoy significant national or international stature. Simply receiving an award with the word "national" or "international" in its title would not satisfy this very restrictive criterion. The petitioner in this case has not shown that the above awards were significant beyond the context of the event where they were presented. We cannot ignore that all of the above competitions took place in the municipality of Weifang.

The record also contains a "Certificate of Merit" stating that the petitioner, in his capacity of Director of the Weifang Kite Association, "provided support and made a contribution to the cultural exchange" during a kite festival in Bingcheng State, Malaysia (1993). This certificate, like others from the City of Monterey Park and Los Angeles County, reflect local or provincial, rather than national or

international, recognition for petitioner's non-competitive involvement in various cultural events.

Finally, it is important to note that the record contains no evidence indicating that the petitioner has won any significant national or international level awards subsequent to his 1997 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 overall 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 confirming his membership in the Chinese Artists Association ("CAA"), U.S.A. The evidence presented, however, does not establish that membership in CAA requires outstanding achievement or that the petitioner 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.*

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 various articles accompanied by partial English language translations. By regulation, any document in a foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Without complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that he was featured because of his extraordinary

achievements.

Several of the newspaper articles (such as the one from *People's Daily*) devote only a few brief sentences to the petitioner. The plain wording of the regulation, however, requires the petitioner to submit "published materials about the alien," and articles that barely even mention him would not satisfy this criterion.

Other articles presented, which discuss the petitioner in much greater depth, appeared in Chinese language newspapers published in the U.S. (such as the *International Daily News* and the *Chinese Daily News*). Also submitted was evidence showing that the petitioner was included in the 1998 *Chinese-American Who's Who in the U.S.A.* (page 185) and *American Dreams Come True: The Stories of 66 Successful Persons in the U.S.* (pages 61 to 63).<sup>1</sup> Like several of the newspaper articles, both of these books were published in California and pertain to the Chinese immigrant community. These books, with such a limited portion devoted to the petitioner, appear to be more of a summary biographical sketch than a special form of recognition limited to an elite few. We cannot conclude that the petitioner's limited entry in these books would constitute qualifying published material about the petitioner and his work. Furthermore, because the above newspapers and books were circulated only among a limited, non-English speaking segment of the U.S. population, they would not qualify as major U.S. media.

The petitioner provided documentation showing that he and his kites appeared on page 60 and 61 of *Chinese Kite*, a "non-profit book about the opening ceremony of the Weifang International Kite Festival." Page 42 of this picture book states: "In August, 1989, Weifang Municipal Government decided to commend the kite makers who [contributed] to six successive international kite festivals." The petitioner was listed among the 63 individuals honored. This book may show that the petitioner earned local recognition in Weifang, but it is not indicative of national acclaim.

Evidence showing the extent of the distribution (number of copies published) of the three books mentioned above was not provided. Without evidence of significant national or international distribution, the petitioner has failed to show that these books would qualify as major media.

And finally, 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 since his arrival in the U.S. The record, however, contains no evidence of any published articles subsequent to 1998. Therefore, we find that the petitioner has not demonstrated he has captured sustained attention from major national or international media.

*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.*

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<sup>1</sup> *American Dreams Come True* was published by Evergreen Book Publishing and Stationary of Monterey Park, California, a company that introduced and promoted products from the petitioner's business, Feitian Handicrafts, Inc.

We withdraw the director's finding that the petitioner's evidence satisfies this criterion.

The petitioner submitted the following evidence:

An honor certificate issued in 1995 by [REDACTED] Chairman of the China Kite Society, stating: "[The petitioner] has passed the professional qualification examinations by National Sports Committee and been appointed a national kite judge."

An honor certificate issued in 1995 by [REDACTED] Chairman of the China Kite Society, stating: "[The petitioner] has been invited to be a judge by China Kite Society for the 7<sup>th</sup> and 8<sup>th</sup> China Kite Contest."

A certificate issued in 1996 by [REDACTED] Chief Judge of the Weifang International Kite Contest, stating: "[The petitioner] was granted the award of Outstanding Judge of the 13<sup>th</sup> Weifang International Kite Contest. This certificate is hereby issued as encouragement."

Differing versions of the above certificates are contained in the record.<sup>2</sup> Without corroborative documentary evidence, such as an event program from the 7<sup>th</sup>, 8<sup>th</sup>, or 13<sup>th</sup> Weifang International Kite Contest listing the petitioner as a judge, we cannot conclude that the petitioner has provided sufficient evidence of his participation. The brief, vague information stated in the certificates offers no details of the petitioner's involvement as a kite judge. Nor has the petitioner provided any documentary evidence of national or international publicity surrounding the events in which he allegedly served as a judge. The documentation presented under this criterion fails to satisfy the statutory demand for "extensive documentation" set forth in Section 203(b)(1)(A)(i) of the Act. Furthermore, in order to demonstrate that he has judged the work of others at the national or international level, the petitioner must provide evidence showing that he judged contests beyond those held in his hometown of Weifang.

We find that the record contains no substantive evidence showing that the petitioner has evaluated the work of others at the national or international level or that he was selected as a judge based on his national or international, rather than his local, reputation.

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

The petitioner submitted evidence showing that he received three Chinese patent approvals for a kite label and two sports kites. The fact that the petitioner is the recipient of an approved patent carries little weight. Of far greater importance in this proceeding is the importance to the greater field of the petitioner's patented innovations. There is no independent evidence to support the conclusion that the

<sup>2</sup> A comparison of the certificates from exhibit 5 to those from exhibits G-2 and G-3 reveals a notable discrepancy. While the certificates have the same exact wording and lettering, it has not been explained why the elaborate background design (which is clearly dark enough to show up on a photocopier) was present on exhibits G-2 and G-3 but not present on the certificates from exhibit 5.

petitioner's patents are internationally recognized as influential contributions to his field. Counsel contends that the petitioner's acquisition of three patents represents a major contribution to the field but he offers no documentary evidence to support that claim. 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). The granting of a patent documents only that an innovation is original. It does not necessarily follow that an approved patent represents a nationally or internationally acclaimed contribution. The petitioner has provided no evidence showing that his patented innovations have attracted widespread interest from kite buyers and kite makers in China, the U.S., or any other country.

The petitioner also submitted four witness letters under this criterion.

A letter from [REDACTED] Chairman of the Weifang Kite Association and former mayor of Weifang City, summarizes the petitioner's accomplishments and states that "he is well-known for kite making skills."

[REDACTED] Chairman, World Association of Chinese Artists (Beverly Hills, California), describes how the petitioner has been recognized locally in California and provides a listing of his awards. The petitioner's awards, however, have previously been addressed under a separate criterion. The ten criteria are intended to be separate and distinct from one another. Therefore, an award cannot fulfill this second criterion without clear evidence that the award was given for specific contributions of major significance, rather than for recognition at a kite contest.

[REDACTED] identifies himself as the Vice President of the World United Kites Society. Mr. [REDACTED] states that he is impressed by the petitioner's efforts to promote the ancient art of kite making in the United States. Mr. [REDACTED] describes the petitioner as "one of the greatest kite designers in the world."

Dr. [REDACTED] Professor of Plant Pathology at California State Polytechnic University, Pomona, California, offers a letter of support for the petitioner on appeal. Dr. [REDACTED] states: "Of course, in this letter I am expressing my views as a citizen, not as a representative of the University." Dr. [REDACTED] argues that it is "unfair to downplay [the petitioner's]... abilities by saying that his field of endeavor is rather obscure to people in the United States.... It seems that [the petitioner's] artistic and social-benefit potential was too minimized in consideration of his petition." The visa classification sought by the petitioner, however, is intended for aliens who already enjoy national acclaim, rather than for individuals with "potential." Dr. [REDACTED] mentions the petitioner's participation in the Newport, Rhode Island Kite Championships, but he does not indicate how the petitioner performed there. We cannot ignore that the petitioner has been residing and working in the U.S. since 1997. Because the statute demands sustained national or international acclaim, the burden is on the petitioner to demonstrate that he has continued to earn such acclaim since his arrival in this country.

The witness letters presented detail the petitioner's activities and accomplishments, but they provide no information regarding how the petitioner's contributions have already influenced his field. The issue here is not the petitioner's skill level or the value of his cultural activities in

California, but, rather, whether any of his individual accomplishments would rise to the level of a contribution of major significance in the art of kite design and production. In this case, the petitioner has not demonstrated any specific artistic or business-related contributions that have been unusually influential or renowned within his field. While the witnesses have asserted in general terms that the petitioner is "well-known," the totality of the evidence in this case indicates that his reputation is limited mostly to Southern California and the City of Weifang. The absence of substantial independent testimony raises doubt as to the extent of the petitioner's acclaim. An individual who is nationally or internationally acclaimed should be able to produce ample unsolicited materials reflecting such a reputation.

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

The petitioner submitted evidence indicating that his work has been collected by the Weifang Kite Museum, National History Museum of Los Angeles County, World Kite Museum of Long Beach, Washington (which counsel refers to as the "Seattle Museum"), the Regional Services Department of Hong Kong, and the local government in Bincheng, Malaysia. The record contains two letters confirming that the petitioner's work was displayed at Evergreen Book Publishing and Stationary, a local business in Monterey Park, California, in an "exhibition of Arts and Crafts from Weifang, Shandong Province." The evidence presented does not establish the national significance of these venues or of the exhibitions. For example, according to information provided by the petitioner from the World Kite Museum's website, that museum was established as recently as 1990 and operates out of a small, one-story remodeled cottage donated to the Long Beach Park Department.

We note that many of the exhibitions in which the petitioner participated occurred in areas where the petitioner was residing at the time of the exhibitions. It must be stressed that an artist/kite designer cannot satisfy this criterion simply by arranging for his or her work to be displayed. In this case, the petitioner has not demonstrated participation in numerous shows or exhibitions devoted solely or largely to the display of his individual work. Nor has he shown that his exhibitions enjoy a national or international reputation or that participation in his exhibitions was a privilege extended to only nationally or internationally acclaimed artists/designers.

For the reasons discussed above, the record is ambiguous regarding the petitioner's acclaim in his native China, and it contains no evidence that the petitioner has sustained whatever acclaim he earned in China since his 1997 arrival in the United States.

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 a designer and

maker of kites to such an extent that he may be said to have achieved sustained national or international acclaim. 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.