U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 26 2004

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

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Elizabeth O'Brien

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petition is now before the Administrative Appeals Office (AAO) 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 has 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 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 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.

In order to meet this criterion, published materials must be primarily about the petitioner and 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. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submits a list of publications with dates that he labels "Reviews" and another list that he labels "Catalogs." Simply stating that these publications contained reviews without providing supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). From his list, the petitioner submits a copy of an interview that appeared in *Museo Teo*, which he states is an art magazine. The publication is undated; however, the interview indicates the year as 1997 (not 1996 as indicated by the petitioner). Although the petitioner indicates the publication is an art magazine, he provides no evidence that the magazine is a major trade or professional publication in satisfaction of this criterion.

A copy of a page labeled "A to Z Things to do, buy and see" from the July 1997 edition of the magazine *Paper*, carries a small paragraph recommending a toy made by the petitioner and describing it as the "hottest 'toy' on the market." This reference to the petitioner is among the 26 (the "A") references listed on the page. This page is not published material about the petitioner as required by the criterion.

The petitioner submits a copy of three pages from *Notizie*, identified on his list as a "catalog." One page contains the petitioner's name, another a picture with Italian text but identified at the bottom as "Imaginary Friend," and the third page carries a picture that cannot be identified by the photocopy, but with English text and labeled at the bottom as "Poem." These documents are not published materials about the petitioner, and there is no evidence that *Notizie* is a professional or major trade publication or other major media.

The record also contains a document the petitioner identifies as "critic text by Marco Senaldi." The publication in which this article appeared is not identified, and thus the document has little evidentiary value.

The petitioner submits no evidence to establish that he meets this criterion.

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

As evidence that he meets this criterion, the petitioner submitted several letters of recommendation and support: [redacted] who states that he works in art, design and television, and has collaborated on projects with the petitioner, "affirms" that the petitioner has made "original contributions" to art. He states he bases his opinion on the facts that the petitioner received a fellowship to the "prestigious" Rijksakademie van Beeldende Kunsten in Amsterdam to attend college, that his book is part of the permanent collections at the Museum of Modern Art in New York, the Center Pompidou in Paris and the Rijksmuseum Meermanno

in the Netherlands, and that his "original Alien soft sculptures" have been displayed and sold in many galleries. It is highly unlikely that an artist will succeed by producing work that is *not* original. Therefore the fact that the petitioner has produced original artwork does not satisfy the requirements of this criterion. The petitioner must show that he has made an original contribution of major significance to the field of art. Mr letter does not establish that the petitioner has done so.

Professor director of the Rijksakademie van beeldende kunsten, states that his institution has a distinguished reputation in the art field. He states that the petitioner's work is "of major importance" for "younger European artists working with the same subject matter," and that the petitioner's work is an "important and innovative contribution to contemporary art." Neither Professor nor the petitioner offers corroborative evidence of the impact of the petitioner's work on younger European artists. Further, although Professor describes the petitioner's work as innovative, he does not establish that the petitioner has made a contribution of major significance to art.

an artist and professor at the Rijksacademy of Visual Arts in Amsterdam "affirms" that the petitioner has made original contributions of major significance because of his "approach in connection with poetry. His work consisting of visually laid out poetry – his own writing – and dreamlike drawings is of a consistent [sic] high quality." Professor does not indicate how this approach has significantly impacted or changed art in a significant way, or that others are emulating the petitioner's style and approach.

The authors of other letters of support and recommendation describe the petitioner as a "rare artist," one who has made a "relevant contribution" to contemporary visual poetry, whose talent has developed in a "remarkable" and "non-conventional" way. Notwithstanding these accolades, the evidence does not establish that the petitioner has made a contribution of major significance to art.

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

Although the petitioner does not claim to meet this criterion, and presented no evidence in support of the requirements, on appeal, he challenges the director's determination that he does not meet this criterion. His argument, however, addresses issues that seem to relate to the sales of his artwork and published material about him and his work, both of which are discussed under separate criteria.

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

The director determined that the petitioner meets this criterion. The petitioner submitted a document that he labeled "Work Experience" and lists what he also labeled as exhibitions, including dates and locations. As noted above, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California, supra.* Professor also lists a number of locations and events where the petitioner's work has been exhibited, but provides no evidence of the source of his information. The petitioner includes what he terms "visual evidence of Artistic exhibitions and showcases," which consists of examples of his work, but these do not establish that the work was displayed in an artistic exhibition.

The petitioner's book of visual poetry is included in a permanent collection of the Museum of Modern Art in New York and the Center Pompidou in Paris. The petitioner also has a video in a permanent collection of the Rijksmuseum Meermanno W.Den Hag in the Netherlands. Although the petitioner's work is not on visual display in these museums, we find that the inclusion of his work in permanent collections of these distinguished museums is sufficient to establish that the petitioner meets this criterion.

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

To establish that he meets this criterion, the petitioner must show that he has performed in a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner submits a letter dated July 21, 1999 from who states he is the president and owner of Kundalini Enterprise, and that the petitioner "has been employed in a critical and essential capacity within the KUNDALINI Design Project from its very beginning." He also states that the petitioner served in a critical role as "artist, designer and collection curator of the Kundalini production." The company is in the business of interior decorating, and Mr. states that the company has a distinguished reputation, and that its items appear in "magazines, books, TV shows, movies and video clips all over the world." The record does not clearly establish what Mr. refers to as the "design project." A project is not an organization or establishment within the meaning of this criterion. Further, other than the owner's own assessment of his company's reputation, the petitioner submits no evidence that Kundalini Corpi di Illuminazion Interiore has a distinguished reputation.

The petitioner also apparently claims to meet this criterion based on the inclusion of his book in the permanent collections of the Museum of Modern Art, the Center Pompidou and the Rijksmuseum Meermanno W.Den Hag. One of the petitioner's videos is in a permanent collection of the Galleria D'Arte Moderna in Torino, Italy. The evidence does not establish that the petitioner's contributions to these collections are critical to the success of these establishments. The evidence does not establish that he meets this criterion.

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 does not specifically claim to meet this criterion; however, the director advised in his request for evidence (RFE) dated February 3, 2003, that, in CIS's experience, the price commanded for an artist's work is often an accurate indicator as to whether the individual is an artist of extraordinary ability. Although the petitioner appears to discourage the artificial setting of a price for his work, he submitted statements from individuals who have purchased or displayed his work. the priest of Boffetto, indicates that the petitioner painted a permanent fresco over the outside of the entrance of one of the church's properties, but does not indicate that the petitioner charged a fee for his work. Other individuals have paid up to $6,000USD for the petitioner's work. The petitioner argues on appeal that the prices should be considered in terms of the Italian economic standards.

Regardless of the standards used, the petitioner submits no evidence by which to evaluate whether the remuneration he receives for his work is significantly high relative to other artists. The petitioner alleges on appeal that the value of the artist's work is not necessarily indicative of its selling price, and names three artists who he states intentionally undervalued their work. It is noted that this criterion is only one of ten meant to aid the petitioner in establishing and documenting extraordinary ability through sustained national or international acclaim. It is not a requirement that the petitioner must claim and prove eligibility under this criterion. The evidence submitted does not establish that he meets this criterion.

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 indicates that the petitioner is a talented artist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.