PUBLIC COPY B2

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 12 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:

[redacted]

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.

for Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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 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 seeks to classify the petitioner as an alien with extraordinary ability as an artist. Preliminarily, we note that on the Form I-140, Immigrant Petition for Alien Worker, the petitioner lists his occupation as instructor. However, it is evident from the evidence submitted that the petitioner is seeking visa preference as an artist of extraordinary ability. Additionally, we note that the Form I-140 indicates that the petitioner initially sought visa preference based on extraordinary ability and also sought a national interest waiver. The service center requested clarification of the visa classification from the petitioner's counsel, who agreed that the petition would proceed based only on extraordinary ability. However, in a response to the director's request for evidence (RFE) dated February 12, 2003, counsel again implied the petitioner was seeking a national interest waiver. The director noted this in her decision but based on the earlier conversation with counsel, made her decision only on the issue of extraordinary ability. Counsel does not contest the visa classification on appeal and the issue will not be addressed.

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.

With his initial submission, the petitioner did not specify which criteria he believed he met. On appeal, counsel states that evidence has been submitted which shows the petitioner 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.

In his response to the RFE, counsel stated the petitioner was the recipient of "numerous" national awards. He stated the petitioner was awarded the "SCAD Presidential Scholarship and also the May Poetter Gallery Award in recognition of excellence in his paintings." Scholarships awarded by a specific college or university such as SCAD (Savannah College of Art and Design) and limited to students at that particular institution are not nationally or internationally recognized prizes or awards in the field. Counsel submits no evidence regarding the May Poetter Gallery Award. The SCAD website indicates the gallery is affiliated with the college and showcases work of students in various disciplines. Competition for this award appears to be limited to students and is not national or international in scope. Counsel submits evidence that the petitioner was awarded a scholarship from the American Society of Portrait Artists (ASOPA) but the record is devoid of any evidence of selection criteria for the scholarship. Further, a scholarship does not measure a recipient's standing in the field, but is limited to students in an academic endeavor. Academic training is not the field of endeavor, but preparation for entry into the field of endeavor. Thus, scholarships do not qualify as awards under this criterion.

Counsel also implies that the petitioner's invitation to become a member of ASOPA and to exhibit his work in Sotheby's International also meet this criterion. However, neither is a prize or an award. The record does not establish that the petitioner meets 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.

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. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submits evidence of his membership in ASOPA. No evidence was submitted of the requirements for membership in the organization but the society's website indicates membership (patronage) "is open to anyone interested in promoting the fine art of portraiture." The evidence does not establish that the petitioner meets 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.

In general, 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 submitted an article that appeared in the February 28, 2003 edition of the Florida *Times Union* Weekend and the March/April 2003 edition of *Arbus*, North Florida's Arts and Business Magazine, announcing his exhibition at a local gallery. These articles appeared after the filing date of the petition. The petitioner must possess the necessary qualifications as of the filing date of the visa petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971). Circumstances that did not exist as of the filing date cannot establish eligibility retroactively. It is further noted that although these articles are about the petitioner, both the *Times Union* and *Arbus* are regional publications and do not constitute "major media." The petitioner submits other publications in which pictures of his work appeared, but other than identifying him as the artist in the captions beneath the photographs, the articles were not about the petitioner or his work. The exception is the brief article identifying him as one of three scholarship winners which appeared on ASOPA's website and in the Winter 2000 edition of its magazine *Signature*. Whether or not this journal qualifies as a major trade publication, this one brief article featuring a one-paragraph biography of the petitioner is not indicative of national or international acclaim.

The statute requires extensive documentation of extraordinary ability, as well as evidence of sustained acclaim. The petitioner has offered no evidence showing his eligibility under this criterion.

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

The director determined that the petitioner presented no evidence of this criterion. However, with his petition, the petitioner submitted evidence that his artwork was part of an exhibition showcased in a 2002 magazine collection by ArtLink and Sothebys.com International Young Art and impliedly in international exhibits. He also submitted evidence that his work was part of a 2002 national juried exhibition presented at SCAD [redacted] President of CAS Fine Art Group, states in a letter that the petitioner's work has been exhibited in Atlanta and Georgia but the petitioner submitted no evidence of these exhibitions.

In response to the RFE, the petitioner submitted articles and brochures of his exhibition at the Spiller Vincenty Gallery in Jacksonville, Florida. As noted above, this exhibition occurred after the petitioner's filing date and cannot be used to establish eligibility. On appeal, the petitioner submitted evidence that his work was part of an exhibition sponsored by his college in Paris, France, and evidence that he received invitations to exhibit his paintings at the Pei Ling Chan Gallery in Savannah, Georgia, and with ArtLink International Young Art in the winter of 2003. Again these events occurred after the filing date of the Form I-140 and cannot be used to establish eligibility.

In order to meet this criterion, the petitioner must establish that his art has been exhibited in shows with national or international standing. An artist is expected to exhibit his or her artwork. It does not follow that all

artists whose work appears at exhibits or showcases have extraordinary ability. The minimal evidence that the petitioner regarding the 2002 ArtLink collection or the 2002 juried exhibition lacks the extensive documentation required by regulation to establish that the petitioner meets this criterion.

The petitioner also submits letters from the president and a professor at SCAD, SCAD's sales and marketing director, an art consultant and a gallery owner attesting to his talent and ability as an artist with great potential. In order to qualify for visa classification as an alien with extraordinary ability, the petitioner must establish that he is already at the pinnacle of his career. While the letters are complimentary about the petitioner's promise, they do not establish his achievements at the top of the field. Further, these letters were written to support the alien's petition. While the opinions of experts in the field are not without weight, they cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

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 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 his 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.