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U.S. Department of Homeland Security
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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 Marie 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. The petitioner submitted a motion to reopen and reconsider or in the alternative, an appeal to the AAO. The petitioner's motion was forwarded as an appeal to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv) and

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. 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 submitted evidence that, he claims, meets the following criteria. As a preliminary matter, we note that the translations of documents submitted in support of this petition are accompanied by no more than a signature of the translator and a notary stamp. The translations do not comply with 8 C.F.R. § 103.2(b)(3), which requires the translator to certify as to his or her competency to translate the documents.

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

The petitioner claims to meet this criterion based on his receipt in 1965 of a "First Degree" certificate by the "All-Russian Society of Nature Protection." The petitioner submits a letter from the director of the exhibition who described the event as a "national exhibition and contest." The petitioner's work was one of 104 from approximately 5,000 selected for display. The director of the contest stated that the petitioner's work received "special attention from the spectators," was written about in the national newspaper, "Leningrad Truth," and that the petitioner received a monetary prize. The evidence fails to establish that this certificate was a national prize or award for excellence. The event appears to be more of a national contest in which the petitioner was one of over 100 finalists. Furthermore, the petitioner's receipt of such an "award" more than 30 years ago is not indicative of sustained acclaim. The petitioner has not established that he 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.

The petitioner submits evidence of his membership in the USSR Artists Union, although it is unclear whether the petitioner still holds membership in the organization. The membership card submitted by the petitioner is dated 1988, while the translated document with the card indicates the union was requesting additional information to be submitted by December 1, 1971. In response to the director's request for evidence (RFE) dated March 28, 2003, the petitioner submits copies of e-mail from [redacted] who provides background information on the artists union of the former USSR. It is unclear from the record who Mr. [redacted] is or his qualifications for providing the information.

According to Mr [redacted] membership in the "creative" unions was necessary in order to display one's work, either as an artist, writer or composer. He states that membership in the artist union was limited to those who had exhibited his or her work in five named cities, whose artwork the media had reviewed, and who was recommended by at least seven members of the union. The application was then processed through successively higher levels before membership was finally approved. Mr. [redacted] states the USSR Artists Union subsequently became the Russian Federation artist union under the cognizance of the United Nations Educational, Scientific, and Cultural Organization, (UNESCO). Mr. [redacted] does not specify the requirements of membership today, but does name the petitioner as a "prominent member" of the USSR Artist Union.

While it appears that membership in the USSR Artists Union may have been based on outstanding achievements under the old USSR regime, the record is unclear of present day membership requirements. The petitioner submits no evidence of Mr [redacted] qualifications to make statements regarding the artist unions or the status of the petitioner's membership. The petitioner submits no evidence of current membership in the organization, particularly since he immigrated to Israel in 1994. The evidence of record does not establish that the petitioner has met 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.

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. We note again that the translations of the documents submitted do not meet the requirements of 8 C.F.R. § 103.2(b)(3) nor do all of the documents meet the authenticity requirements of this criterion such as title, date and author of the material.

The petitioner submits an article entitled "The Art of Creating Beauty" which apparently appeared in the August 13, 1965 edition of the *Tzeliniy Kray* newspaper. The petitioner submitted no evidence of the author of the article nor did he submit evidence that this newspaper is major media. The petitioner also submitted articles entitled "Lilac Jerusalem" and "Discovery of Oneself." No evidence was submitted with the petition as to when these articles were published or the print media in which they appeared. In response to the RFE, the petitioner resubmitted the uncertified translations of the articles with the names of newspapers and dates of publication typed at the top. "Discovery of Oneself" was purportedly reported in the December 22, 1964 edition of *Sovetskaya Abkhazia*. Counsel submits an uncredited statement that the newspaper has a circulation of 45,000 in several major cities in Soviet Georgia and Abkhazia. No evidence is presented as to the circulation of the newspaper in 1965. "Lilac Jerusalem" was apparently published in the February 8, 1995 edition of *Nash Jerusalem*. Evidence submitted reflects that today, this is a weekly newspaper, published in Russian, and has a circulation of approximately 30,000 copies distributed in "170 locations in Israel." The information provided with these articles is insufficient to establish the newspapers as major media. Furthermore, even assuming the evidence can be accepted as presented, three articles in a career that spans more than 30 years does not establish that the petitioner has sustained acclaim.

The petitioner also submitted evidence that one of his paintings was reproduced in a book entitled *Israel 50*, described as an illustrated history of Israel of the past 50 years. According to the editor, the petitioner was one of 25 artists chosen to have work appear in the book, of which one million copies were printed. The petitioner submitted a copy of the page of the book on which his painting appeared, but does not indicate that he is otherwise discussed in the book. The plain language of the regulation requires that the published work be about the petitioner relating to his work. An inclusion of a reproduction of a painting in a book about Israel is not published material about the petitioner and does not satisfy this criterion.

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

Counsel states that the significance of the petitioner's work is evident by the "demand for [his] paintings by prominent collectors and galleries, the fact that two of his artworks are displayed in a museum in the Republic of Georgia, and the expert testimony that [the petitioner's] work is original, unique, and has made a major impact on the field of primitive, naïve art."

The evidence of record does not establish that the petitioner's work is in demand by prominent collectors and galleries, or that his work is on display in a Russian museum. The petitioner submits letters from several individuals who state that they are art collectors and have bought some of petitioner's work. Nothing in the record establishes their "prominence" in the field of art collection. Further, there is no evidence of a demand for the petitioner's work by any art gallery. Assuming however that the demand existed, the evidence would

not be indicative of any contribution of major significance the petitioner may have made to the art field. Such evidence, if proved, may be indicative of commercial success, which is the subject of a separate criterion.

There is also no evidence in the record of the petitioner's work being displayed in a museum in the Republic of Georgia. There is evidence that his work decorates a wall at the entrance to a resort city in Georgia, and a wall of a restaurant there. According to a letter from the Deputy of Parliament of Abkhazia, the wall to the city has become a tourist attraction. Nonetheless, this does not establish that the petitioner has contributed significantly to the field of art as would be the case if he had popularized or created a new art style. All successful artists' work can be described as original and to some degree unique. Those factors alone are not dispositive of having made a major contribution to any field.

The petitioner's letters of recommendation attest to his skill as an artist. a fellow artist, writes that "[m]any fine artists were born and raised in the ancient land of Abkhasia, but none are so sincere and original as [the petitioner]." another fellow artist, describes the petitioner as "very gifted and talented," with a "diverse personality." writes:

> I was deeply impressed by [the petitioner's] artworks and the sub textual meaning in his art. He amazed everyone with the ability to present Jewish culture live on canvas with his artistic imagination. His art encompasses our heritage, tradition, culture, and customs. Therefore, such an extraordinary artist is absolutely necessary for the conservation of Jewish culture in the United States.

who describes herself as an art collector, states she was "drawn" to the petitioner's paintings and purchased two of them for her collection, and that she is "confident" in the petitioner's talent as an artist. Chairman of the European Art Gallery in Dallas, states that the gallery is "impressed" by the petitioner's skills and his unique style and that the gallery believes the petitioner has "special skills" in this field. Mr states the gallery will also "consider" exhibiting the petitioner's work when he is granted residency.

Mr. owner of Eduardo Ristorante, Garland, Texas, states he was "astonished by the extraordinary work this artist has done" and that he had seen no primitive art as outstanding as the petitioner's, and that his friends in the art business mark the petitioner's work as extraordinary.

Although attesting to the pleasure his works give the authors and asserting the benefit he would be to the United States and the American Jewish community, these letters offer little in the way of establishing the petitioner as having contributed significantly to the artistic field, and fail to establish that he meets this criterion.

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

With his petition, the petitioner submitted two photographs labeled "Exhibition in the Pocket Sandwich Theatre, Dallas, Texas, September 19, 2002" which shows paintings hanging on a wall. He also submitted two photographs labeled "Solo Exhibition the 'Theater of Jerusalem', Jerusalem, Israel, October 1998," showing people posed in front of paintings hanging on a wall. None of the paintings were identified in the photographs as being those of the petitioner. Further, no evidence was submitted to indicate nature and scope of the exhibitions, or any evidence from the exhibitions reflecting time, date, location or other evidence of the

exhibition. The petitioner also submitted a copy of what appears to be a brochure from an art exhibition held in an art museum in Beer Sheva, Israel in February 1998, and another apparent brochure featuring a painting by the petitioner for an exhibition in July 1998. The latter document contains only a summary translation, which does not comply with the regulatory requirement for a complete translation and does not indicate where the exhibition was held. The petitioner also submitted a copy of an invitation to one of his exhibitions at Ye Olde English Tea Room & Gallery in Jerusalem in 1995.

In his RFE, the director requested documentary evidence of the petitioner's exhibitions such as articles in newspapers or professional publications. Counsel failed to provided corroborative documentary evidence of these exhibitions, relying instead on the petitioner's own publication and statements.

Several of the letters of support submitted by the petitioner refers to exhibitions at the Jewish Community Center in Dallas, the Cardo Gallery in Jerusalem, and the Habustan gallery in Jerusalem. The petitioner submitted photographs labeled "Cardo Gallery, Jerusalem" and "Safrai Gallery, Jerusalem, Israel." With the exception of the exhibition at the Dallas Jewish Community Center, however, it is difficult to ascertain whether these were true exhibitions or merely the artist's work exhibited for sale. The petitioner's evidence thus establishes only one exhibition in 1995, which appears to be local and does not evidence national or international acclaim.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

To establish that he meets this criterion, the petitioner submitted letters from two purchasers of his artwork. One states he has purchased six paintings by the petitioner at a cost of $11,000 total. The other states she has paid $4,000 total for two paintings. These "testimonials" do not establish that the price of petitioner's work is significantly high as compared to others in his field. On the contrary, the chairman of the European Art Gallery states his gallery sells art valued from $2,000 to $80,000. The petitioner's paintings sell at the low end of that scale and do not establish that his remuneration is high relative to others in the art world. The evidence does not establish that the petitioner meets this criterion.

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 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.