

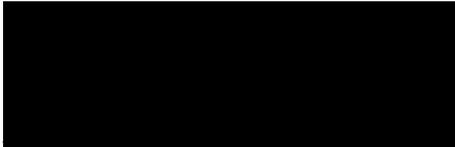
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U.S. Citizenship
and Immigration
Services



FILE: EAC 02 113 51257 Office: VERMONT SERVICE CENTER Date: **NOV 03 2004**

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)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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. The director focused on the petitioner's failure to establish a significantly high remuneration, one of the ten regulatory requirements of which a petitioner must meet only three.

On appeal, counsel quotes the law and regulations discussed below and states:

The Statute does not specifically give weight of one kind of document over another. The only thing that it requires is these documents must demonstrate that "the alien has sustained national or international acclaim and that his achievements have been recognized in the field of expertise." By emphasizing one kind of document, i.e. evidence that [the] alien has commanded a high salary or other significant high remuneration for services, in relations to others in the field while ignoring other substantial evidence is a misinterpretation of the Statute.

We concur with counsel, although we note the requirements discussed by counsel are found in the regulations, not the statute.¹ Nevertheless, while the director did fail to address some of the evidence, we find that such evidence does not establish the petitioner's eligibility for the reasons discussed below.

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.

¹ The director's focus on the petitioner's remuneration might be more persuasive if the petitioner were seeking extraordinary ability in business. A similar argument could be made that an athlete who does not claim to meet 8 C.F.R. § 204.5(h)(3)(i)(awards or prizes), a visual artist who does not claim to meet 8 C.F.R. § 204.5(h)(3)(vii)(displays at artistic exhibitions or showcases), or a performing artist who does not claim to meet 8 C.F.R. § 204.5(h)(3)(x)(commercial success in the performing arts) bears a heavy burden.

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 a painter and digital artist.² 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.³

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 evidence of the following awards:

1. \$500 First Prize at the Ibiza International Art Competition in 2001,
2. One of five First Prizes at the 8th Cannon Cup “Asian Elegancy” International⁴ Competition of Chinese Photographer[s] in 2001,
3. One of 45 “Finalists” for the first Australian International Digital Art Award in 2001, and
4. First Place in the “2D” competition of the first Pixxelpoint International Art Festival in 2000 as awarded by “the public” as opposed to the jury, which also issued 2D awards.

Counsel asserts that the petitioner also won an “Honorable Mention of Werkleitz Awards” in 2001. The evidence submitted to support this assertion is a foreign language document listing the petitioner’s name and including the designation “nominiert Werkleitz.” The petitioner did not provide a translation of this document. Counsel also asserts that one of the petitioner’s awards includes “Winning artists, DIGITAL 2000.” In support of this assertion, the petitioner submitted a catalogue of the artists who participated in this exhibition and the petitioner’s icon on their website, but no evidence that the petitioner received any award or prize at this event. The petitioner submitted similar evidence to support counsel’s claims that the petitioner won an “Excellence Prize” at Transmedia 2000, an Internet exhibition; the Silver Prize at the 27th FNS Title Fair in Japan in 1998; and the 3rd IDN Digital Image Award in Hong Kong in 1998. In addition, the petitioner did not submit complete, certified translations of the foreign language certificates allegedly documenting his Third Prize at the International Art Competitions in Beijing in 1999 and 2000 and the Hong Kong Cup National Calligraphy and Photography Competition in 1991.

² While the petitioner only listed “painter” as his proposed employment, the record contains considerably more evidence relating to his abilities as a digital artist.

³ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

⁴ The record does not explain how a competition limited to Chinese photographers is “international.”

In response to the director's request for additional evidence, the petitioner submitted evidence that he won second prize in photography⁴ at the 2001 Biennale Internazionale dell'Arte Contemporanea in Florence. Materials about the award reflect that an international jury judged the competition. The petitioner also submitted evidence of a prize awarded after the date of filing, which is not relevant to the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The director concluded that the petitioner had not demonstrated the significance of the awards as the record suggested that such competitions are numerous and lacked expert testimony and media coverage of the events.

On appeal, the petitioner submits additional materials regarding the Biennale dell'Arte, the Ibiza International Art Competition, and the Pixxelpoint competition. The materials throughout the proceedings regarding the Ibiza and Pixxelpoint competitions are not persuasive. They appear to be newly organized Internet competitions with limited notoriety nationally or internationally. Nevertheless, we find that the materials regarding the Biennale dell'Arte in Italy are quite persuasive. In discussing the display of Prince Charles' work at this event, the BBC calls it "one of the most prestigious contemporary art exhibitions in the world." Thus, we find 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.

In response to the director's request for additional evidence, the petitioner submitted evidence of his membership in the International Organization of Scenographers, Theater Architects and Technicians. The petitioner's membership card expires in 2004. The director did not consider this evidence. Nevertheless, this failure did not prejudice the petitioner's case. The petitioner submitted no evidence that he was a member at the time of filing and no evidence relating to the membership requirements of this organization. Thus, the petitioner has not established that he 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.

The petitioner submitted an article in *ArtChina* that includes visual excerpts of his video images. The article, however, is about the City of Beijing. Counsel also references publication of the petitioner's work in *Art Oriental* and *Hong Kong and Taiwan Information Journal*. The petitioner submitted photocopied pages from *Art Oriental* that include the petitioner's work among a larger collage of multiple pictures. The petitioner did not provide any text with accompanying translation to put the inclusion in the collage in context. Finally, the petitioner submitted a photocopy of a page from a newspaper that includes two pictures by the petitioner. The accompanying certified translation identifies the publication as *Hong Kong and Taiwan Information Journal* but does not indicate that there was an accompanying article about the petitioner.

In response to the director's request for additional evidence, the petitioner submitted unsigned documents that include information that appears to have been compiled from several websites regarding the distribution of *ArtChina* and *Oriental Art*.

⁴ The website indicates that the prize was for digital art.

The petitioner also submitted a review of the petitioner's work at an exhibition that occurred after the date of filing. The petitioner also submitted a book, *Cement: Marginal Space in Contemporary Chinese Art*, which includes a page of the petitioner's work. The book was published after the date of filing. This evidence cannot be considered relevant to the petitioner's eligibility as of that date. Moreover, the review is not primarily about the petitioner and the book has not been established to be major media.

The director concluded that the record lacked "international news articles." The petitioner, however, need only establish national acclaim. Even if we accepted that the articles appeared in major national media, however, they are not primarily about the petitioner. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner submitted article authored by him published in the *China Construction Materials Journal* and *Culture Monthly*. The articles include a one-page summary of the life of German artist "Friedrich," a half-page description of the town of Lijiang, a half-page summary of the life of Michelangelo, and a half-page discussion of collecting Min Yao Blue old china. Once again, the director failed to acknowledge this evidence. Nevertheless, none of these articles represent a scholarly discussion of digital art and video, the petitioner's field, or even art in general. Thus, the petitioner has not established that he meets this criterion.

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

While the evidence did not support counsel's assertions that the petitioner won awards at the following exhibitions, the evidence does support the petitioner's participation in the following exhibitions: DIGITAL 2000, Transmedia 2000, an Internet exhibition and the 27th FNS Title Fair in Japan in 1998. The petitioner also submitted evidence of numerous additional exhibitions, including:

1. The Ninth New York Digital Salon in 2001, an international juried exhibition at the Visual Arts Museum at the School of Visual Arts,
2. The European Media Art Tour, 2001/2002, one of the largest multimedia events in Europe according to the tour organizers,
3. The Austrian 5th Graz Biennial on Media and Architecture in 2001,
4. The Italian Biennale Internazionale dell'Arte Contemporanea in 2001,
5. The Japanese Asia Digital Awards exhibition in 2001,
6. The Microwave International Media Art Festival in 2001,
7. The Third IDN Digital Art Exhibition in Hong Kong in 1999,
8. The China Art Exposition in 1999, and
9. Several other exhibitions in China.

In response to the director's request for additional evidence, the petitioner submitted evidence of more recent exhibitions and video festivals that have no relevance to the petitioner's eligibility as of the date of filing. The director noted that the record lacked evidence of critical reviews of the exhibits and concluded that this omission, in combination with "the absence of exceptional fees for his work," precluded the petitioner from meeting this criterion. Significantly high remuneration for services is a separate criterion set forth at 8 C.F.R. § 204.5(h)(3)(ix). While we concur with the director that the petitioner does not meet this criterion, the petitioner does not claim otherwise.

We do not find it appropriate to conclude that the failure to meet one criterion precludes meeting an entirely separate criterion. Nevertheless, the significance of the exhibitions is a relevant consideration. Any artist who makes a living as an artist must display his work. Evidence of display must be indicative of or at least consistent with national or international acclaim. We concur that critical reviews might have bolstered the petitioner's case. That said, the petitioner's exhibition history reveals that his work has been displayed at international exhibitions including at least one where internationally renowned jurors judged the work. Thus, we find that the petitioner does meet this criterion.

Finally, the petitioner submitted reference letters. The director dismissed these letters as the petitioner did not submit "letters from experts beyond his home country of China." Once again, the petitioner resides and works in China. He need not demonstrate acclaim outside of China. Nevertheless, the letters do not appear to be from experts in the field outside of the petitioner's immediate circle of colleagues and do not relate to the ten regulatory criteria.

In summary, for the reasons discussed above, the petitioner meets two criteria, but falls far short of meeting any of the other criteria. The regulations require that a petitioner meet three to establish eligibility.

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 him as a painter and digital 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 shows talent as a painter and digital 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.