U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 209 54215 Office: VERMONT SERVICE CENTER Date: OCT 27 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.

Marie Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent [illegible] warranted

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.

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 a papier mache 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.

> *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.*

Initially, counsel asserted that the petitioner is a member of the National Art Education Association, Weston, Virginia; the Statute of Liberty Collector's Club, New York; the Williamsburg Art & Historical Center of

Brooklyn; and the Industrial Designers Society of America. The petitioner submitted a letter from [redacted] Founder and Artistic Director of the Williamsburg Art & Historical Center, who asserts that the petitioner is a member of the Williamsburg Salon art club, but does not explain how members are selected. This evidence does not suggest that the petitioner is a member of an association that requires outstanding achievements of its members.

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 several newspaper articles, including one published in the "Marketplace" section of *The Wall Street Journal*. The article, while featuring one of the petitioner's masks in the accompanying photograph, is about the donated pieces of artwork that have poured into New York City after September 11, 2001, "many of dubious merit." The petitioner is not mentioned by name. Other articles appeared in local New York area publications. The petitioner did not submit evidence of the publications' national distributions. Moreover, while the petitioner or his work appears in the photographs, the articles cannot be said to be "about" the petitioner. Rather, the articles are about exhibits where the petitioner was one of several artists or organizations to which the petitioner donated his work. The remaining articles appeared in foreign language publications. As noted by the director in her request for additional documentation, the petitioner failed to submit full translations as required by 8 C.F.R. § 204.5(h)(3)(iii).

In response to the director's request for additional documentation, the petitioner submitted an article in *Where*, a New York magazine dedicated to shopping, dining and entertaining in New York. The petitioner is the subject of the article, but the petitioner submitted no evidence that the magazine has a national distribution. Moreover, the article was published after the date of filing and, thus, cannot establish the petitioner's eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner also submitted his personally certified translation of an article in *Nedelnik*, a Bulgarian weekly. While the article is about the petitioner and his work, it postdates the filing of the petition and the petitioner did not submit any evidence of the circulation of this paper.

The above evidence does not establish that the petitioner has been the focal subject of independent journalistic reportage that appeared in major, nationally distributed media.

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

Initially, counsel asserted:

> [The petitioner's] artistic contributions to the fields of art and art education are numerous. [The petitioner's] individualized art appeals to the average art lover as well as the connoisseur. He is considered a master of collage and paper mache artistic techniques.

These assertions do not identify a specific contribution to the field of art. None of the evidence, including the numerous letters, explains how the petitioner has changed the field of art. They do not identify a new, influential technique developed by the petitioner or a similar contribution of major significance. As the letters mostly do not address the ten criteria, they will be discussed at length below pursuant to counsel's claim that they constitute "comparable evidence."

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

The petitioner displayed his work at the "Stopping by the Vande-Ende Onderdonk House" art exhibit; "Salon 2002;" "American Carnival" at the Schafler Gallery; "The Contribution of Arts and Religiosity Toward Fertilizing Peace" and a subsequent members' exhibit at the Williamsburg Art & Historical Center; and several Bulgarian exhibitions between 1974 and 1981. The petitioner also sells his work at the Folk Art Museum, the American Visionary Art Museum, the Van der Plas Gallery, and the Skirball Cultural Center. Other evidence reveals that the petitioner also sells his masks on the street. While the petitioner invited [redacted] to attend his American Carnival exhibition in 1999, the mayor was unable to attend. We note that anyone can invite a prominent political figure to attend his exhibition. While the mayor may not have been able to attend for various reasons, it remains that an invitation to the mayor is not evidence of national acclaim.

In addition, [redacted] met the petitioner at a National Art Education Association (NAEA) conference and decided to include a photograph of one of the petitioner's masks and some text about the petitioner in one of her textbooks. It is not clear that, at the time of filing, the textbook had already been published. Further, [redacted] Artistic Director of the Immigrants' Theatre Project, Inc., asserts that the project will be incorporating the petitioner's masks into one of their plays. The letter postdates the date of filing and does not establish the petitioner's acclaim as of the date of filing. Similarly, the petitioner was the guest artist in a weeklong event hosted by the Architects/Designers/Planners for Social Responsibility (ADPSR), a national nonprofit organization based in New York. Once again, this event took place after the date of filing. Finally, a customer invited the petitioner to sell his work at her gallery in Florida. There is no evidence the petitioner did so prior to filing the petition.

We note that any artist who makes a living in the field must display his work. Evidence submitted to meet any criterion must be indicative of or consistent with national acclaim. The record lacks evidence that the petitioner's work has been displayed at exclusive exhibitions nationally.

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

While the petitioner did not initially claim to meet this criterion, the director raised concerns regarding the petitioner's remuneration for his work and as an instructor. Specifically, the petitioner submitted a letter from [redacted], Employment Manager at Fashion Institute of Technology, asserting that the petitioner was paid $44.12 per hour as an Adjunct Instructor. Other evidence suggests the petitioner sells his masks for between $50 and $65. The director questioned whether this remuneration was comparable to the most experienced and acclaimed artists in the country. In response, counsel noted that [redacted] died without having sold any of his paintings and asserted that more than 60 percent of artists earn less than the petitioner.

The regulations do not allow us to subjectively evaluate an artist's abilities. Rather, the standard is whether or not the alien is nationally or internationally acclaimed. We acknowledge that there may be reasons why an acclaimed artist is not being compensated at a level comparable with the most experienced and acclaimed artists in the country and that an alien need not meet this criterion as long as he meets at least three of the other criteria. The mere fact, however, that the petitioner might be earning more than 60 percent of artists, assuming he works full time at $44.12 per hour, is not evidence that he is one of the very few at the top of the field.

Comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4)

8 C.F.R. § 204.5(h)(4) allows "comparable evidence" to the regulatory criteria where those criteria "do not readily apply."[1] Initially, counsel asserted that the reference letters in the record constitute "comparable evidence." Counsel does not identify the criterion to which this evidence is comparable or explain why that criterion is not applicable. On appeal, counsel asserts that the director erred by failing to consider the letters. At the outset, we note that solicited letters of reference are not comparable to the type of objective evidence required by the regulations. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. We have already considered the letters above as they relate to the ten regulatory criteria. We will consider the remaining assertions here.

[redacted] President of the Museum of Modern Art (MOMA), expresses her support of the petition. On appeal, counsel asserts that a letter from the president of this museum represents recognition by a nationally renowned institution. The content of the letter, however, is not persuasive. [redacted] discusses the importance of artists in general. She does not address any of the ten criteria above or assert that the petitioner is nationally acclaimed. In fact, she does not even provide her own subjective opinion of the petitioner's work.

[redacted] an architect who purchased one of the petitioner's masks, asserts that the petitioner's work is "fine art" and had been displayed in "several galleries and museums." [redacted] does not identify the galleries or museums. The petitioner's displays have been considered above.

[redacted] President of the Independent Friends of [redacted] asserts that she has collaborated with the petitioner on murals, exhibitions and community affairs. She asserts that the petitioner has "fans and followers now, all over the United States." While the petitioner undoubtedly sells his work to tourists from outside New York City, we cannot conclude that every New York artist who sells his work on the streets of New York to tourists enjoys national or international acclaim.

[redacted] an art teacher in Oregon who met the petitioner in New York, extols the patriotic nature of the petitioner's work and expresses his hope that the petitioner can remain in the United States. [redacted] does not address the ten criteria or explain how the petitioner has attained national acclaim. The petitioner submitted a similar letter from Ben Apfelbaum, Director of Exhibitions at the Spruill Center for the Arts.

[redacted] an artist with works in the Brooklyn Museum, asserts that the petitioner will continue to make important cultural contributions through his artwork, but does not identify a specific contribution other than to assert that the petitioner's work is unusual and important. These characterizations do not necessarily imply that the petitioner has influenced the field as a whole such that his work can be considered to have made a contribution of major significance. [redacted] does not assert that the petitioner has influenced his own work. [redacted] Director of Exhibitions at the Pratt Institute, provides a similar letter.

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[1] For example, in the case of a coach, we sometimes consider evidence of awards or prizes won by his athletes as comparable evidence to meet 8 C.F.R. § 204.5(h)(3)(i).

[redacted], a trustee of the Tucson Museum of Art, praises the petitioner's creativity and ability to reduce his production time. [redacted] then concludes that the petitioner fits in the category of artists "who make it." The issue is not whether the petitioner makes a living in his field, but whether he has attained national acclaim in the field. While [redacted] asserts that he collects masks and has given 150 masks to the Tucson Museum, he does not indicate any of those masks are the petitioner's.

[redacted] Executive Editor of *Where* magazine asserts that the petitioner is among the small percentage of artists who have risen to the top of the field. This subjective opinion, without reference to the ten regulatory criteria, is not helpful. The regulations do not require us to evaluate artwork subjectively. Rather, we must determine whether the artist has demonstrated national or international claim by submitting evidence that meets at least three of the ten regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). The petitioner also submitted similar letters from [redacted] Director of the Interior Design Program at Marymount College of Fordham University; [redacted] Owner/Director of a gallery in California; and [redacted] an artist and art educator in Brooklyn, New York.

Other letters simply confirm receipt of donations by the petitioner. Any artist can donate his work. The mere act of donating one's work is not evidence of acclaim. Still other letters are from satisfied customers. Any artist who makes a living in the field has customers who enjoy the work they purchase. Satisfied customers are not necessarily evidence of national 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 a papier mache 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 papier mache artist and has some recognition in the New York City area, 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.