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U.S. Citizenship
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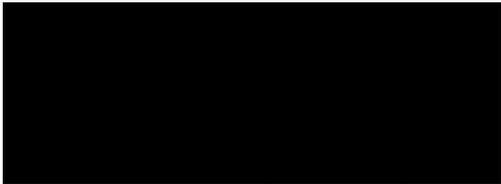
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FILE: WAC 03 112 52783 Office: CALIFORNIA SERVICE CENTER Date: APR 13 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

Maui Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a visual artist. The director addressed the petitioner's evidence in relation to five criteria, but found that the petitioner met only one criterion and was consequently ineligible for classification as an alien with extraordinary ability. Counsel repeats his initial claims on appeal and presents no substantive reason to question the director's decision. The evidence submitted and counsel's contentions are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The director correctly concluded that the petitioner's academic diplomas did not meet this criterion. The petitioner received a diploma in drawing and design instruction from the Erevan Arts College in 1978 and a diploma in scene painting from the Erevan State Arts and Theater Institute in 1984. These diplomas evidence the petitioner's satisfactory completion of academic courses of study in the visual arts, but they are not equivalent to nationally or internationally recognized prizes or awards granted to professional visual artists.

On appeal, counsel claims that the petitioner's membership in the Artists Union of Russia and the International Federation of Artists as well as his participation in the U.S.-Russian Mayor-to-Mayor Program all constitute prizes or awards that meet this criterion. The record does not support this claim. Two documents verify the petitioner's membership in the Artists Union of Russia and the International Federation of Artists, but the record is devoid of any information about these organizations that would indicate that membership is so exclusive or prestigious that it warrants consideration as a prize or award for excellence in the visual arts. Instead, the petitioner's membership in these organizations is more relevant to the second criterion and will be discussed below. Similarly, the petitioner's involvement with the U.S.-Russian Mayor-to-Mayor Program is more relevant to the seventh criterion (concerning artistic exhibitions). The petitioner's "participation" in this program consisted of a one-time exhibition of his work along with 46 other Russian artists in the "Russian Charity Fine Arts Auction" at The Russian Cultural Centre in Washington, DC. The brochure from this auction does not indicate that any prizes or awards were granted during the exhibition or that mere participation was comparable to a prize or award. Accordingly, the petitioner does not meet 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 director correctly determined that the petitioner did not meet this criterion. On appeal, counsel repeats his contention that the petitioner's membership in the Artists Union of Russia and the International Federation of Artists meets this criterion. Counsel's contention is unsupported by the record. The petitioner only presents evidence of his membership: a certificate verifying his membership in the Artists Union of Russia and a photocopy of his membership card for the International Federation of Artists.¹ The record contains no evidence of the membership selection criteria for either association that would establish that they require outstanding achievements of their members as determined by recognized national or international experts in the visual arts.

On appeal, counsel maintains that the petitioner's membership in the Crossroad art group fulfills this criterion. Again, the record does not support this contention. No evidence indicates that this creative group is a formal association that requires outstanding achievements of its members as judged by recognized national or international experts in the visual arts. According to the Dow Art Gallery exhibition catalogue, the Crossroad art group consists of four Armenian artists whose work reflects the intersection of Eastern and Western cultural traditions. The petitioner is one of two founding members of the group and, as such, was self-selected for membership. Consequently, the petitioner's membership in this group cannot establish his eligibility under this

¹ The two organizations may not even be independent of one another. The petitioner's International Federation of Artists membership card states that the petitioner is a member of "International Federation of Artists & national Artist's Union of Russia, department." This statement suggests that the latter organization is a subsection of the former.

criterion. Rather, his role in the Crossroad art group is more relevant to, and is discussed below in relation to, the fifth and eighth criteria.

Published material 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 director correctly concluded that the newspaper articles submitted did not establish the petitioner's eligibility under this criterion. The record contains three newspaper articles that briefly review group exhibitions in which the petitioner participated. The petitioner's work is summarily discussed in only two of the articles. The article from the *Horgauer Zeitung* newspaper contains a short, two-sentence paragraph describing the petitioner's paintings. The article from the *Montreaux/Riviera* newspaper may contain a longer discussion of the petitioner's work, but the photocopy of the relevant portion of the original article in French is cut off and the English translation is abbreviated into one short sentence: "Armen stages little daily stories [...] shows [sic] beauty created for himself and others" (bracketed ellipsis in original). Moreover, the newspapers do not appear to be professional or major trade publications and no circulation information is provided to establish that any of the three newspapers qualify as major media.

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

The director found no evidence regarding this criterion and counsel does not contest this conclusion on appeal. However, the record contains evidence relevant to this category that merits brief discussion. As previously mentioned, the petitioner is a founding member of the Crossroad art group. This group consists of Armenian artists whose work reflects the heritage of their homeland as a "crossroad between east and west, north and south and ... always the crossroad of different cultures."² Although the evidence suggests that the Crossroad art group had some impact on the field of visual arts in Russia, that evidence is insufficient to establish that the petitioner himself has made original artistic contributions of major significance that would reflect sustained national or international acclaim for his own work independently. The newspaper articles previously mentioned only briefly describe the petitioner's work. Contrary to counsel's assertion, the *Nachrichten* newspaper article's proclamation that the Crossroad members "show colossal artistic potential from another world" does not evidence established, original artistic contributions of major significance. The quotation heralds artistic "potential," not accomplishment. Most importantly, the article describes the collective potential of the Crossroad art group, it does not speak of the petitioner's major, original artistic contributions to the field of visual arts as an individual. Consequently, the petitioner does not meet this criterion.

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

The director correctly determined that the petitioner met this criterion. The record contains 15 catalogues and brochures, and three newspaper articles for group exhibitions in which the petitioner has participated. These documents establish that the petitioner's work has been displayed in Russia, the United States and Switzerland. In addition, the petitioner's work is in the permanent collections of the Moscow Museum of Contemporary Arts and the Yerevan Modern Art Museum.

² Petitioner's Exhibit E(3), Exhibition review published in the *Nachrichten* newspaper.

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

The director found no evidence in the record relevant to this category and counsel does not challenge this conclusion on appeal. However, the record contains evidence relevant to this criterion that merits brief discussion. The petitioner's role as a founding member of the Crossroad art group is relevant, but ultimately insufficient to establish his eligibility under this criterion. As discussed above in relation to the fifth category, the Crossroad art group has apparently attracted some attention for blending Eastern and Western cultural influences and artistic techniques. As a founding member, the petitioner has undoubtedly played a leading role for the group. However, the record is insufficient to establish that the Crossroad art group is a formal organization that has a distinguished reputation or that the petitioner's role in the group demonstrates his own sustained national or international acclaim as an individual artist. Hence the petitioner does not meet 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 director correctly concluded that the evidence was insufficient to establish the petitioner's eligibility under this category. Counsel contests this determination on appeal by asserting that the petitioner's paintings were "priced at up to \$3,000 each, a significant sum in Armenia as well as European countries." Counsel also claims that the article in the *Nachrichten* newspaper states that "substantial sums were paid for the petitioner's art work." Once again, counsel's claims are uncorroborated. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the catalogues for three charity art auctions for Operation Smile, the petitioner's work is priced between \$1,200 and \$3,000. The work of other painters in these exhibitions was priced as high as \$8,000. The record contains no documentation of the actual sale or sale price of the petitioner's work or how those prices compared to the prices of other visual artists' work in Russia at that time. Contrary to counsel's suggestion, the *Nachrichten* newspaper article does not state the selling price of the petitioner's work and the petitioner presents no other evidence that his work commands significantly high prices in comparison to other visual artists in Armenia, Russia or European countries.

We note that the contemporary art market in Russia is not comparable to that in the United States or certain other countries.³ However, given the number of exhibitions in which the petitioner has participated both within Russia and abroad, one would expect that he would be able to produce primary evidence of the actual sale of his work if he wished to establish eligibility under this criterion. Yet the record is devoid of any sales receipts or gallery sale contracts. Even the "Acceptance for Sale Report #18" from the Moscow Museum of Contemporary Arts does not state the price paid for the petitioner's two paintings. In sum, the record is insufficient to establish that the petitioner's work commands relatively high prices that demonstrate his sustained national or international acclaim as a visual artist.

³ The exhibition catalogue for *Art Manege '99 Moscow* explains the "[a]bsence of the functioning art-market and almost total absence of communications between the creator and potential 'consumer' of contemporary art" in Russia. Apparently, the Russian art "[g]allery as a business-structure [has lost] its sense and change[d] its status, turning to [an] organization realizing non-commercial exhibition projects or social and political demands." Petitioner's Exhibit D(9).

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner is an accomplished Russian painter whose work has been exhibited in his native country and abroad, but the record does not establish that he is an artist of extraordinary ability. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.