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U.S. Citizenship
and Immigration
Services

BA

FILE:

[REDACTED]
EAC 05 128 50515

Office: VERMONT SERVICE CENTER

Date: **DEC 21 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:

SELF-REPRESENTED

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.

Mari Johnson

S 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. 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on March 28, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a "Horticulture Artist." The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since July 1999. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than five years), it is reasonable to expect her to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation in this country.

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 pertaining to 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.

The petitioner submitted an undated certificate allegedly issued by the "MINISTRY OF EDUCATION, SINGAPORE" stating that the petitioner's "COLLECTION HAS BEEN AWARDED THE BEST FASHION ART WORKS IN THE 3RD SOUTHEAST ASIA ART EXHIBITION." There is no indication as to what specific "collection" of the petitioner's work that this award certificate refers. Nor is it apparent as to why the word "FASHION" appears on the petitioner's award certificate. In this case, the petitioner claims that her area of expertise is horticultural design rather than fashion. Nevertheless, the petitioner's evidence fails to demonstrate that the 3rd Southeast Asia Art Exhibition actually took place or that her work was featured there. The date and location of this exhibition have not been identified. Nor has the petitioner submitted evidence of a brochure from the exhibition or media publicity surrounding the event.

The petitioner submitted a second undated certificate that states:

THE NATIONAL ART AWARD

THIS CERTIFICATE IS HONOURLY AWARDED TO [the petitioner] FOR HIS CONTRIBUTION [sic]
IN PROMOTING TRADITIONAL ART BY DEPARTMENT OF CULTURE

Aside from the misspelling of "contribution," this certificate incorrectly refers to the petitioner as a male. Further, we note that although the wording on the certificate is completely legible, for some inexplicable reason, the Department of Culture seal is completely illegible. It has not been explained how "promoting traditional art" constitutes excellence in the petitioner's field of endeavor, horticulture art.

It should be noted that the record contains a copy of the petitioner's Malaysian passport, issued on February 16, 2001. Astonishingly, under "Profession," the passport identifies the petitioner as a "Manicurist," despite her claim that she is nationally recognized in Malaysia as a "Horticulture Artist."

The petitioner has not addressed the occupational discrepancy in her passport. Nor has the petitioner resolved the deficiencies regarding the preceding award certificates. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

The petitioner also submitted a certificate allegedly issued by the "ASIAN ARTS MUSEUM, KUALA LUMPUR, MALAYSIA" stating that the petitioner received an "APPRECIATION AWARD" in 1997. The petitioner does not explain how receiving an "appreciation award" reflects excellence in horticulture art. Further, this award reflects institutional recognition rather than national or international recognition.

In response to the director's notice of intent to deny, the petitioner submitted a "Certificate of Appreciation" allegedly issued by the "Department of Education Development" of Malaysia. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Because the translation accompanying the petitioner's certificate was not certified as required by the regulation, it cannot be accepted as evidence. Nevertheless, the award is deficient in that it reflects institutional recognition rather than national or international recognition. Further, the petitioner does not explain how receiving a "Certificate of Appreciation" reflects excellence in horticulture art. Finally, we note that the uncertified translation refers to the petitioner as a male rather than a female.

The petitioner also submitted a certificate allegedly issued by "THE MALAYSIA ASSOCIATION OF ARTS" for "EXCELLENCE ACHIEVED IN GARDENING DESIGN 1996." The certificate bears a computerized signature from [REDACTED] Executive Chairman." There is no evidence showing that this certificate reflects national or international recognition rather than organizational recognition.

On appeal, the petitioner submits a second certificate entitled "NATIONAL ARTS AWARD" (1996) that refers to the petitioner as a "MOST PROMISING ARTIST." The certificate bears a computerized signature from [REDACTED] Chairman of Committee," but the name of the committee and the issuing entity have not been identified. There is no documentation from the awarding entity or the print media to establish that this award is a nationally or internationally recognized award. Further, we note that this award refers to the petitioner as a "PROMISING ARTIST." This visa classification, however, is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

Simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that her award certificates enjoy significant national stature. In this case, there is no independent evidence showing the level of recognition associated with the petitioner's awards. Furthermore, there is no evidence showing that the petitioner has received any awards subsequent to 1997. The absence of such awards indicates that the petitioner has not sustained whatever level of acclaim she may have earned in Malaysia during the 1990's.

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 order 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 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. In addition, it is clear from the regulatory language that members must be selected at the

national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In response to the director's notice of intent to deny, the petitioner submitted what is alleged to be evidence of her membership in the Organization for Academy Art (OAA). The record, however, includes no evidence of the membership bylaws or the official admission requirements for this organization. There is no evidence demonstrating that admission to membership in the OAA required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership.

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

The petitioner submitted eleven images of what are alleged to be her gardening designs. Without further evidence, it cannot be determined that the petitioner's designs are among those pictured. Nevertheless, the plain language of this criterion requires the petitioner to provide evidence demonstrating that her work has been "displayed" at horticulture "exhibitions or showcases." In this case, the specific names and locations of the exhibitions and showcases that featured the petitioner's work have not been identified. In fact, there is no contemporaneous evidence (such as an event program or brochure) demonstrating the petitioner's involvement in any horticulture exhibition or showcase in the U.S. or Malaysia.

In this case, the petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record contains no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Page 6

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.