

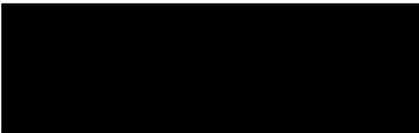
PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

BA



FILE: 
EAC 04 121 52927

Office: VERMONT SERVICE CENTER

Date: **DEC 27 2005**

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:

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

This petition, filed on March 15, 2004, 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, internationally 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 the following:

1. "Certificate of Merit" stating that the petitioner's painting, "The Rain The Mountain City," was awarded a "First Prize in the Fifth China Art Works Exhibition" (November 20, 1996)
2. "Certificate of Honor" stating that the petitioner's painting, "Mandarin Duck & Peony," was "collected and exhibited by China Art Gallery" (October 2000)
3. "Certificate of Honor" stating that the petitioner "was granted the Gold award of National Painting Art contest" (August 1998)
4. "Certificate of Honor" stating that the petitioner "was granted the First-class award of National Painting Art 'Yan Wu Cup' contest" (April 1993)
5. "Certificate of Award" stating that the petitioner "was granted the Gold award of national outstanding painting artists contest" (September 1996)
6. "Certificate of Honor" stating that the petitioner "was granted the Silver Award of the first 'Loving China Cup' National Art Exhibition" (December 1997)
7. "Certificate of Honor" stating that the petitioner's painting "'Aoxue' won the Award of Excellence in Painting Art category of the Third National Broadcasting and TV programs Contest" (November 1997)
8. "Certificate of Honor" stating that the petitioner "was granted the Gold Award of year 1997 Modern China Art Contest"
9. Certificate of Appreciation thanking the petitioner for his "great contribution in performance in 1998 Spring Festival Joint Evening Party sponsored by Chinese Central TV"
10. "Certificate of Honor" stating that the petitioner was granted the "Award of Excellence of the Twelfth National TV Art - Xingguang Award of Fine Art" (August 1998)
11. "Certificate of Honor" stating that the petitioner was granted the "first class award of national fine art contest" (December 1994)

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. The translations accompanying the petitioner's award certificates were not certified as required by the regulation.

In regard to item 9, there is no explanation regarding how a painter would contribute in a "performance" at a festival. In this case, the petitioner claims that his area of expertise is the visual arts (painting) rather than the performing arts. Nevertheless, there is no evidence showing that this certificate is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner's participation.

In regard to items 1 through 11, the record includes no information about the art contests (such as the award criteria, the number of entrants, or the percentage of entrants who earned some type of recognition). It is typical for large-scale art contests or exhibitions to distribute art programs or brochures listing the award categories and the names of the participating artists. The record, however, includes no such evidence. Further, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. Because the statute requires "extensive

documentation” of sustained national or international acclaim, the petitioner must submit evidence showing that his awards enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or the print media establishing that the petitioner’s awards are nationally or internationally recognized artistic awards.

In addition to the above deficiencies, the record includes no evidence showing that the petitioner has received significant artistic awards subsequent to 2000. The absence of such awards suggests that the petitioner has not sustained whatever acclaim he may have earned in China.

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.

The petitioner submitted a “Certificate of Honor” dated March 16, 1998 stating that he was selected to be a member of the China Artists’ Association (CAA).

On appeal, the petitioner submits what is alleged to be his “Membership Card” for the CAA. The membership card lists the petitioner’s age as “41” and an issuance date of “March 1998.” We note, however, that the petitioner was born on October 3, 1957. In March 1998, the issue date of the membership card, the petitioner would have been age 40 not age 41. The petitioner has not resolved this discrepancy. 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 submits a certificate indicating that he is a member of The World Association of Beauty Culture (WABC) of Flushing, New York.

The record does not include the membership bylaws or official admission requirements for the WABC or the CAA. There is no evidence showing that admission to membership in these associations required outstanding achievement or that the petitioner was evaluated by national or international art experts in consideration of his admission to membership.

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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted a 26-page printed collection of his paintings entitled *Modern Chinese Painting Collection*. The inside cover of this printed collection includes a one-page piece about the petitioner entitled "Back to the Nature – [the petitioner's] Art World." In a letter accompanying the petition dated March 10, 2004, the petitioner argues that this evidence satisfies this criterion. The record, however, includes no evidence showing the volume of distribution of this material. Without evidence of substantial national distribution, we cannot conclude that this printed collection qualifies as "major media." Further, the author of the one-page piece about the petitioner has not been identified as required by the plain wording of this criterion.

On appeal, the petitioner submits an article published in *China Press* on February 17, 2005. This article came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Aside from the issue of the date that this evidence came into existence, there is no evidence showing that this publication has substantial readership beyond Chinese language readership in the New York metropolitan area. The petitioner has failed to provide evidence showing the volume of national readership of *China Press*. Because the overwhelming majority of the U.S. population does not read or comprehend Chinese, it has not been shown that an article appearing in such a publication constitutes published material in the "major media." Finally, we note that the author of the *China Press* article has not been identified as required by the plain wording of this criterion.

In this case, we find no evidence to demonstrate that the petitioner has earned sustained acclaim in the national media of China or the United States.

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

On appeal, the petitioner submits what he alleges is evidence of his authorship of books entitled *The First Step to Landscape Painting* and *Contemporary Chinese Painting Artwork*. The translations accompanying

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

the covers of these books were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, evidence of the content of these books has not been submitted.

The petitioner also asserts that the 26-page printed collection of his paintings entitled *Modern Chinese Painting Collection* satisfies this criterion.

The record, however, includes no evidence of the field's reaction to these publications, nor any indication that they are widely viewed as significantly influential. Furthermore, there is no evidence showing that these publications had substantial national or international readership.

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

The petitioner submitted various photographs showing that he was present at the [REDACTED] Convention Center's "International Artexpo" in 2004, but there is no evidence identifying which of the petitioner's paintings were displayed there or indicating how many other artists' works were on display at that same event.

The petitioner also submitted a "Certificate of Honor" issued in October 2000 stating that his painting "Mandarin Duck & Peony" was "collected and exhibited by China Art Gallery." The record, however, includes no information regarding the reputation of this gallery. We note here that display of the petitioner's work for purposes of sale carries significantly less weight than does museum display, strictly for the purposes of public viewing. To hold otherwise would be to qualify every artist who allows his or her work to be seen prior to purchase, thus defeating the restrictive purpose behind this criterion.

On appeal, the petitioner submits various photographs of what are alleged to be his paintings on display, however, there is no evidence (such as an event program or brochure) identifying the specific venues where the petitioner's work was featured.

The petitioner also submits a "Certificate of Honor" stating that his painting "'Yuanyangmudan' was on exhibition and collected by China Art Museum [sic]." The record, however, includes no information regarding the reputation of this museum.

In this case, the petitioner has not submitted evidence showing that his works have regularly been displayed at exclusive national venues. Nor is there any indication that the petitioner's works have often been featured along side those of artists who enjoy national or international reputations. Furthermore, the petitioner has not demonstrated his regular participation in shows or exhibitions at major venues devoted to the display of his work alone. The evidence presented by the petitioner is not sufficient to show that the petitioner's exhibitions enjoy a national reputation or that participation in his exhibitions was a privilege extended to only top national or international artists.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a "Certificate of Employment" (dated April 2000) from the China Art and Craftsmanship Association stating that he held the position of "Painting Artist; Researcher; High-level Expert of Art and Craftsmanship." This document includes no address, phone number, or any other information regarding how this association may be contacted. Nevertheless, it has not been shown that this organization has earned a distinguished reputation at the national or international level. Nor has the petitioner submitted evidence detailing the dates of his service, his specific responsibilities for the association, and his individual importance to its overall success. We find the petitioner has not established that he performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In this case, the petitioner has failed to demonstrate that he 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.

Beyond the regulatory criteria, the petitioner submitted letters of support from individuals affiliated with the petitioner through either an art event or through involvement with an organization. These letters describe the petitioner as a talented artist, but they are not adequate to demonstrate his sustained national or international acclaim. Vague statements attesting to the petitioner's standing and skill are less persuasive than specific examples of achievements.

Review of the record 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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.

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.