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**U.S. Citizenship  
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Services**

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FILE:   
EAC 05 097 52691

Office: VERMONT SERVICE CENTER

Date: NOV 16 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 (AAO) 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 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.

The Form I-140, Immigrant Petition for Alien Worker, was filed on February 17, 2005. Part 6 ("Basic Information about the Proposed Employment") of the I-140 petition lists the alien petitioner's "Job Title" as "Sales Representative." The evidence submitted by the petitioner, however, relates to his achievements in building design. On appeal, the petitioner states: "I provide other materials prepared in support of my talents in the construction field . . ." Because the record is devoid of evidence relating to the petitioner's achievements as a sales representative, this decision will address the petitioner's claim that he qualifies for classification as an alien of extraordinary ability in the construction field.

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 December 1997. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than seven years), it is reasonable

to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a building designer 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 a prize certificate allegedly issued in 2002 by the "American Chinese Professionals Association" (ACPA) of Bridgewater, NJ stating: "[The petitioner] was awarded the best design Prize at the compound suspended sky building design [sic]."<sup>1</sup> This award bears no signature or certification from the ACPA. Nevertheless, such an award constitutes local or institutional recognition rather than national or international recognition.

On appeal, the petitioner submits an undated letter allegedly issued by [REDACTED] President, ACPA, stating:

In the competition of construction design contest hold [sic] in New Jersey, normally more than 700 design masters participated in the competition. . . . After carefully [sic] and strict selection, only 20 winner [sic] are chosen for 2<sup>nd</sup> advanced competition.

In the second turn, 2 masters are chosen for best design prize.

[REDACTED] letter does not include an address, phone number or any other information regarding how she or the ACPA may be contacted.<sup>2</sup> There is no evidence showing that the 700-contestant competition described in [REDACTED] letter actually took place in New Jersey in 2002. Large-scale competitions typically issue event programs listing the order of events and the names of the participating contestants. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other contestants. The petitioner, however, has provided no evidence of the official comprehensive results for this 2002 competition. Nor has the petitioner submitted contemporaneous evidence of publicity or media coverage surrounding the event.

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<sup>1</sup> The certificate, issued in the English language, includes grammatical and punctuation errors raising questions regarding its authenticity.

<sup>2</sup> The petitioner has submitted several letters and certificates that bear the signature of [REDACTED] and identify her as the "President" of the ACPA (none of which provide contact information). Two of the letters allegedly issued by Elizabeth Wong are dated December 29, 2004 and April 29, 2005. However, there is no evidence showing that on the dates these letters were issued that Elizabeth Wong was serving as the "President" of the ACPA.

The petitioner also submits a "CERTIFICATE LETTER" (dated December 22, 2002) stating: "This is to recognize [the petitioner's] achievement as excellent design work [sic], as an excellent achievement of his peers [sic], and is recognized by ROWLAND HTS, China Association." Even if we were to accept this award as authentic (which we do not), it constitutes local recognition rather than national or international recognition.

*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 what is alleged to be his certificate of membership for the ACPA. The petitioner also submitted a document describing the purpose of this association stating: "ACPA is a unique organization composed of Chinese professionals from all walks of life. This association was formed to promote communication, support, and career development for Chinese professionals in America." We cannot ignore, however, that the petitioner is "Malaysian" rather than Chinese. We note that the record includes copies of the petitioner's current and expired passport, issued by the Malaysian Government in 1986 and 1997.<sup>3</sup> Astonishingly, under "Profession," the passport identifies the petitioner as a "Journalist," rather than as a building designer or sales representative. 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.

On appeal, the petitioner submits a letter allegedly issued by Elizabeth Wong on April 28, 2005.<sup>4</sup> The letter states: "Our standards are high in choosing the members of association with the following procedure. MEMBER MUST WIN NATIONAL OR INTERNATIONAL COMPETITION PRIZE." The record,

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<sup>3</sup> The passport issued in 1997 was renewed by the Malaysian Consulate on April 26, 2002. The petitioner's place of birth as listed in both passports is Perak, Malaysia.

<sup>4</sup> The letter (which identifies [redacted] as "President" of the ACPA) includes no address, phone number or any other information regarding how she or the ACPA may be contacted. Nor has it been established that [redacted] was serving as the "President" of the ACPA on April 28, 2005.

however, includes no evidence of the membership bylaws or the official admission requirements for the ACPA to support this claim.<sup>5</sup>

The petitioner also submits what is alleged to be his "Certificate of Membership" for the "Construction Association of Malaysia." The record, however, includes no further information about this association or its membership requirements.

In this case, there is no substantive evidence showing that admission to membership in the Construction Association of Malaysia or the ACPA requires outstanding achievement or that applicants are evaluated by national or international experts in consideration of their admission to membership.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, serving as a judge for a national competition involving professionals is of far greater probative value than serving as a judge for a local competition involving amateurs.

On appeal, the petitioner submits a "CERTIFICATE LETTER" allegedly issued by the "ROWLAND HTS, CHINA ASSOCIATION" stating that the petitioner "is a judge committee member in construction." The plain wording of this criterion, however, requires "[e]vidence of the alien's participation . . . as a judge of the work of others." In this instance, there is no evidence of the petitioner's activities as a judge for the Rowland Heights China Association. For example, the record lacks information regarding the nature of the petitioner's duties in this capacity, the events at which he served as a judge, the names of individuals he evaluated, and their level of expertise. We cannot ignore that the statute and regulations require "extensive documentation" of sustained national or international acclaim. Without evidence showing that the petitioner's activities involved evaluating established construction professionals at the national or international level, we cannot conclude he meets this criterion.

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

The petitioner submitted what are alleged to be five of his designs for the new World Trade Center in New York City. A caption pasted onto the bottom of a page bearing one of his alleged designs states: "I-CHETEAU [sic] IN THE AIR WITH 10 PLANES AND 5 ANGLES NEVER FORGET THE WTC BLOODING BUILDING. Designed by [the petitioner]." The evidence presented in this case is not adequate to demonstrate that these building designs are actually the work of the petitioner. Even if we were to assume

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<sup>5</sup> The petitioner's initial submission included the cover page of an ACPA newsletter from 2000. At the bottom of the cover page appears a website address for the ACPA. This website, <http://www.acpa-usa.org> (accessed November 14, 2005), includes membership application information, but there is no requirement that those seeking admission must win a "national or international competition prize."

that the World Trade Center designs were his work (which we do not), the specific venues where the petitioner's construction designs were displayed have not been adequately identified.<sup>6</sup> In fact, there is no contemporaneous evidence (such as an event program or brochure) demonstrating the petitioner's involvement at construction design exhibitions in the U.S. or Malaysia.

It must be stressed that a building designer does not satisfy this criterion simply by arranging for his or her work to be displayed or evaluated. We find no evidence demonstrating that the petitioner's designs have regularly been displayed at exclusive national venues. Nor has the petitioner demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his designs alone. The evidence presented by the petitioner is not sufficient to show that his exhibitions enjoy a national reputation or that participation in his exhibitions was a privilege extended to only top national or international building design experts.

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's appellate submission includes two letters allegedly issued by Phil Reyes, "previous mayor of Duarte City," California, and Professor [REDACTED] "Construction Expert in Duarte City construction committee." The letter from [REDACTED] is unsigned, and neither his letter nor Professor [REDACTED] letter includes an address, phone number or any other information regarding how these individuals may be contacted. Furthermore, the frequent occurrence of grammatical errors in the preceding letters raises questions regarding their authenticity. Such letters are not adequate to demonstrate the petitioner's sustained national acclaim or extraordinary ability in the construction field.

The petitioner's appeal was filed on May 11, 2005. The appellate submission was accompanied by supporting evidence (which has been addressed throughout this decision). On the Form I-290B, Notice of Appeal to the AAO, however, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than six months later, the AAO has received nothing further.

Review of the record does not establish that the petitioner has distinguished himself 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.

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

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<sup>6</sup> On appeal, the petitioner submits an undated letter allegedly signed by [REDACTED] stating: "As president of the AMERICAN CHINESE PROFESSIONALS ASSOCIATION, I remember that [the petitioner's] construction design exhibition was held in January, 2002 in the gallery of the AMERICAN CHINESE PROFESSIONALS ASSOCIATION. Over 20 design works were exhibited." There is no evidence showing the address of this gallery or that such a gallery actually exists.

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).

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.