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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
EAC 03 226 50922

Office: VERMONT SERVICE CENTER

Date: **NOV 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:

[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.

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 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.

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.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a painter. The petitioner initially submitted supporting documents including evidence of his exhibitions in his native Nepal and abroad, newspaper articles purportedly about the petitioner, numerous certificates of his purported prizes from various exhibitions, seven letters of recommendation, and an unpublished portfolio of his paintings. Many of the documents submitted with the petition were printed in a foreign language. The regulation at 8 C.F.R. § 103.2(b)(3) states, "Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which 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

majority of documents submitted with the petition were in a foreign language and were accompanied by uncertified English translations. Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports his claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On appeal, counsel contends that the director did not give proper weight to evidence previously submitted and submits additional evidence including information about his income, the newspapers that purportedly published articles about the petitioner, and his more recent endeavors. Much of the evidence submitted on appeal arose after the petition was filed and consequently cannot be considered. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

We address the remaining evidence and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not discussed below.

(i) 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 certificates and other evidence of his purported receipt of 12 prizes or awards for his painting in Nepal, nine of which were documented by materials submitted in a foreign language with uncertified English translations. Without certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3). Although one certificate entitled "Bicycle Rally '89" is printed in English, the record contains no documentation of how the petitioner's participation in a bicycle rally over 14 years before his petition was filed is related to his work as an artist.

The petitioner submitted excerpts from three exhibition brochures printed in English that document his receipt of three prizes. The first brochure is for the "27th National Art and Craft Exhibition (2053)" and includes photographs of the petitioner and his painting that was granted a "Contemporary Art Consolation Prize." The submitted excerpt includes a statement from Uttam Nepali of the Royal Nepal Academy Faculty of Fine Arts and Crafts who briefly describes the history of the exhibition, but does not explain the significance of the petitioner's consolation prize. The second brochure is for the "30th National Art and Craft Exhibition 2056," organized by the Nepal Association of Fine Art (NAFA) and held at the National Birendra Art Gallery. One page of this program features a photograph of the petitioner and his painting, which won the first prize in the Traditional Arts category. In an introductory essay, the Chairman of the organizing committee, Vijay Thapa, explains that awards were granted in three categories. Mr. Thapa comments on "the difficulty in the process of selection. There were many art objects that looked equally good and it was not easy to give the judgements. After serious discussions and consultations the jury selected the art objects for awards this year." The year of both the twenty-seventh and the thirtieth National Art and Craft Exhibitions are stated in a calendar that differs from the Gregorian calendar. Without an explanation and translation of this date we cannot determine if the petitioner's two prizes demonstrate sustained acclaim. The third brochure is for a "Paintings Exhibition" organized by the Commercial Artists' Association of Nepal (CAAN) and held at the Art Council Babarmahal in Kathmandu on August 17, 2001. The petitioner is pictured along with his painting that received the first prize. The submitted copy of the program contains an introduction by CAAN Central President I.B. Malla, which is partially cut off. I.B. Malla states, "Commercial Artists' Association is a common [sic] organization of commercial artists. Around 15 thousands [sic] members are associated in this association. . . . [T]his exhibition

shows a [illegible] and experience to participated artist[s] as well as other newcomer and followers members [sic].”

The record contains no other materials related to these exhibitions or any further documentation of their significance. For example, the record contains no critical reviews or national media coverage of the exhibitions and the petitioner’s prize winning works and none of the submitted recommendation letters discuss the petitioner’s receipt of these awards. On appeal, counsel simply states that the petitioner “previously provided evidence of twelve awards that he has received in Nepal. Several of these award [sic] are recognizable national awards for excellence in Nepal In particular, Mr. Sharma received awards from the Nepal Association of Fine Arts and the Commercial Artists Association of Nepal, consisting of approximately 15,000 members.” The record does not demonstrate that the petitioner’s prizes from the NAFA and CAAN exhibitions are nationally recognized prizes that reflect sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

(ii) 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 petitioner does not claim eligibility under this criterion on appeal. However, with his petition, he submitted a copy of his “Artist Identity Card” issued by the Artists’ Society of Nepal. The card identifies the petitioner as a “Gen. Member” in the category of “Con. Art” and is valid to “Sawan 2060.” The record contains no evidence of the Society’s membership criteria or any other evidence that outstanding achievements are prerequisite to Society membership. In addition, without a translation of the date into the Gregorian calendar, we cannot determine if the petitioner’s membership is consistent with sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(iii) 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 petitioner initially submitted six newspaper articles purportedly about him and his work. On appeal, counsel contends that three of these articles were published in leading, national Nepalese periodicals and submits additional evidence about these periodicals. Yet all of these articles were printed in a foreign language and were submitted with uncertified English translations. Without certified translations of the documents, we cannot determine whether the articles support the petitioner’s claim. See 8 C.F.R. § 103.2(b)(3).

On appeal, the petitioner submits three additional newspaper articles that review a restaurant. The petitioner’s painting of the goddess Kumari for this restaurant is seen in the background of photographs accompanying the reviews. These articles do not meet this criterion because they are not about the petitioner or his work and because they were published after the petition was filed. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Accordingly, the petitioner does not meet this criterion.

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

The director found that the record did not establish that the petitioner “has been recognized outside of his native country.” While it is true, as counsel states, that the statute and the regulation do not require international recognition of an alien’s contributions, the record does not demonstrate that the petitioner was recognized for making original artistic contributions of major significance in Nepal in a manner consistent with sustained national acclaim. On appeal, counsel states that the petitioner “previously provided significant evidence of the recognition he has received within his native country, in the form of awards, publications and recommendation letters from experts in the field. [The petitioner] has also been recognized outside of Nepal as evidenced by his invitations to display his work in India, Japan and the United States.”

As previously discussed under the first and third criteria, the record does not establish that the petitioner won awards or received media coverage consistent with sustained national acclaim in Nepal. The petitioner submitted seven letters of recommendation, two of which are accompanied by uncertified English translations and consequently cannot be considered. Without certified translations of the documents, we cannot determine whether the evidence supports the petitioner’s claim. *See* 8 C.F.R. § 103.2(b)(3). Five individuals involved with the fine arts in Nepal wrote the remaining letters. While such letters provide relevant information about an alien’s experience and accomplishments, they cannot by themselves establish the alien’s eligibility under this criterion because they do not demonstrate that the alien’s work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner’s contributions.

Another Nepalese artist, describes the petitioner as “highly energetic, serious to discipline and sentiments. . . . I am highly impressed by his works, and I wish for a successful exhibition hoping he would be a well known artist in the field of art in the country.” Mr. Mishra does not discuss any specific, major contributions that the petitioner has made to his field.

Artistic Director of the Aarohan Theatre Group in Kathmandu, states that the petitioner has taught street children who live in the Aarohan hostel through a partnership project with UNICEF from 1994 to 1995. explains that the “training was for the street children to express their feelings and make their own identity through the painting.” While this letter attests to the petitioner’s commendable teaching, it does not establish that his work on the Aarohan-UNICEF project made an original, major contribution to his field. also states that the petitioner designed posters for five Aarohan productions, but the record contains no evidence that these posters were recognized for their original and major contribution to the petitioner’s field.

a Nepalese artist, explains the difficulties faced by modern artists in Nepal and states, “I am very pleased to the efforts [sic] and ability of Sunil to conserve and promote the Nepalese arts despite the mentioned difficulties and problems; he has done it by self-study. . . . There is curiosity behind however he has worked in different styles. I found he is energetic to let understand [sic] the modern Nepalese art. Though ignored by the national authorities, Sunil is well known as a successful artist and has impressed by [sic] his arts internationally. It can be taken as his bright future and the possible contribution we can expect through him.”

of the Nepal Artists’ Society, describes the “marvelous compositions” in the petitioner’s work and states that “[a]s a highly potential [sic] artist, Sunil should be encouraged to go further so that his

contribution would promote the modern art in Nepal. [REDACTED], of NAFA, states that the petitioner has proven “himself to be a milestone in the world of young artists. It is now no longer a specially new event when Mr. [S]harma receives prizes, but with a firm hope that he will introduce further new trends in the world of Nepales [sic] art.” [REDACTED] of the Durga Gallery, affirms that “[a]s done by the traditional artists, the efforts of Sunil Sharma to promote the Nepalese art at international arena are highly appreciable. [He] doesn’t abide to any specific style and medium. To learn new styles, it needs additional studies and feelings, he thinks, and which adds significant features in the arts. Next, he points to the importance of feelings and Nepalese ethnicity in arts.”

While most of these letters discuss the petitioner’s promotion of Nepalese art, they do not specifically describe how he has done so or how his work has made original contributions of major significance to his field. In addition, all the letters describe the petitioner as a young artist and many of the letters discuss his future potential rather than his past accomplishments. As discussed below under the seventh criterion, the record shows that the petitioner consistently exhibited his work in Nepal and has conducted one exhibition in Japan and one in the United States. Yet the petitioner submitted little evidence regarding the significance of his exhibitions and the record does not establish that any of his exhibitions have made original, major contributions to his field in a manner consistent with sustained national or international acclaim. The record contains no other evidence that the petitioner has significantly influenced other visual artists in Nepal or abroad, or has otherwise had a major impact on his field. Accordingly, the petitioner does not meet this criterion.

(vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.

The record documents eight exhibitions of the petitioner’s work in Nepal between 1995 and 2001, one solo exhibition in Tokyo in 2000 and one solo show in Washington, District of Columbia (DC) in 2002. Yet frequent display of one’s artwork is inherent to the petitioner’s profession. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. Apart from the programs and postcards from the petitioner’s exhibitions in Nepal and Japan, the record contains no evidence of these exhibitions or their significance. As discussed under the first criterion, the petitioner received honors for his work in two national exhibitions in Nepal, but the record does not establish that these accomplishments demonstrate sustained national acclaim.

As documented by the record, the petitioner’s exhibitions in Japan and the United States are also inconsistent with sustained international acclaim. In Japan, the petitioner held a solo exhibition at the Japanese Tea House in Tokyo in 2000. An introduction in the exhibition brochure describes and praises the petitioner’s work, but the record contains no evidence that the exhibition was critically acclaimed, reported in national or international art publications or other media, that the Japanese Tea House is a prestigious artistic venue, or any other evidence of the significance of this exhibition.

The record further shows that the petitioner personally paid for his exhibition at the Artists’ Museum in Washington, DC. A “Rental Exhibition Contract” between the petitioner and the Artists’ Museum states that the total cost of the “Rental Exhibition Package” was \$2,100 and the attached terms of the contract state that the Artists’ Museum “is a rental exhibition gallery.” An exhibition procured through payment by the artist does not demonstrate the requisite sustained acclaim. In addition, the only stated selection criteria for the museum is “the prior review and acceptance of either the nature of or the specific artwork to be exhibited” and the record

contains no evidence that the Artists' Museum is an exclusive or prestigious venue, exhibition at which would reflect national or international acclaim.

In an undated letter, Rajendra Oli, President of the America Nepal Society, explains that this exhibition was part of the petitioner's plan to "travel and show his art-work [sic] in many big cities where there is a thriving Nepali community and Nepal loving people" and that the Royal Nepal Ambassador would inaugurate the petitioner's exhibition on November 17, 2002. Yet an October 31, 2002 letter from the Royal Nepalese Embassy in Washington, DC does not confirm that the Ambassador would inaugurate the exhibition, but simply requests the U.S. Embassy's assistance in facilitating the petitioner's visit to the United States. The submitted printout from the museum's website shows that the petitioner's work was shown at the museum on November 2-29, 2002. The petitioner also submitted an article from *Spacetime* that purportedly discusses this exhibition, but the article was submitted with an uncertified translation that misstates the date of the exhibition as November 17, 2003. Again, without a certified translation of the document, we cannot determine whether the evidence supports the petitioner's claim. See 8 C.F.R. § 103.2(b)(3).

On appeal, counsel contends that the petitioner meets this criterion, in particular, through his exhibitions at "the Artists [sic] Museum (now known as the Apex Gallery) in Washington DC; the Nepalese Embassy in Washington DC; and the Lalit Festival, which invited leading artists from Nepal to participate." The record does not support this statement. As discussed above, the record does not establish that the petitioner's exhibition at the Artists' Museum meets this criterion. The record also contains no evidence that the petitioner exhibited his work at the Nepalese Embassy. Finally, in his foreword contained in the Lalit Festival program, [REDACTED] Co-chairman of the festival, states that it is "very satisfying to find that 47 leading artists in and from Nepal have joined the exhibition of contemporary paintings." [REDACTED] does not state that these artists were invited to participate in the festival or that exhibition at the festival was by invitation only. The record contains no other evidence of the significance of the petitioner's participation in the Lalit Festival. On appeal, the petitioner submits documentation that he displayed his work at another cultural festival in the United States, but we cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

Although the record documents the display of the petitioner's work in Nepal, Japan and the United States, the evidence does not establish that the petitioner's solo exhibitions or his participation in group exhibitions reflect the requisite sustained acclaim, rather than the routine activities of a working visual artist. Accordingly, the petitioner does not meet this criterion.

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

The petitioner initially submitted no evidence relevant to this criterion. On appeal, counsel claims the petitioner satisfies this category and submits evidence of sales of the petitioner's artwork. We cannot consider this evidence because it arose after the petition was filed; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), 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 evidence in

this case does not establish that the petitioner had achieved sustained national or international acclaim as an artist placing him at the very top of his field at the time of filing. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.