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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B2



FILE: [Redacted]  
EAC 04 241 50034

Office: VERMONT SERVICE CENTER

Date: OCT 31 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*

*[Signature]*  
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 that he qualifies 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 August 19, 2004, seeks to classify the petitioner as an alien with extraordinary ability as an 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 December 1995. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than eight years), it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as an artist 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 certificate stating that he received a "Silver Medal in 'Universal Cup' Youth Batik Art Design Competition" in 1995.

The petitioner also submitted a certificate stating that he received a "1<sup>st</sup> Class Prize of 1993 National 'Youth Cup' Batik Art Design Competition."

In regard to the preceding "youth" awards, there is no indication that the petitioner faced competition from throughout his field, rather than his approximate age group within the field. Such awards offer no meaningful comparison between the petitioner and established professional artists. The record contains no evidence of publicity surrounding these awards or evidence showing that they enjoy a significant level of recognition. Simply receiving an award certificate with the word "national" or "universal" in the title does not satisfy this very restrictive criterion. Because the statute requires "extensive documentation" of sustained national or international acclaim, the petitioner must submit contemporaneous evidence showing that his awards enjoy significant national or international stature.<sup>1</sup>

On appeal, the petitioner submits an "Honor Certificate" issued on July 15, 2004 stating that he was appointed as a "researcher" at the "China Calligraphy and Paintings Research Institute." This document has no address, phone number, or any other information through which this institute may be contacted. It has not been established that this research appointment reflects a significant national honor for artistic excellence (rather than institutional recognition). Furthermore, there is no evidence in the record indicating what led to the petitioner's selection or how he will fulfill the responsibilities related to this research appointment.

It should be noted that the record contains a copy of the petitioner's passport, issued in New York by the Ministry of Foreign Affairs of the People's Republic of China on April 24, 2000. Astonishingly, under "Profession," the passport identifies the petitioner as a "Cook," despite his claim that he is nationally recognized in China as an artist (based on his works from the 1990's). 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.

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<sup>1</sup> For example, large-scale competitions typically issue event programs listing the order of events and the names of the individual participants. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the competitions in which he received awards.

In this case, the record contains no documentation from the awarding entities or print media to establish that the petitioner's awards are nationally recognized awards for artistic excellence. Furthermore, we note that although the petitioner has resided in the United States since 1996, there is no evidence showing that he has won any significant awards from reputable art organizations within this country. The absence of such awards suggests that the petitioner has not sustained whatever acclaim (if any) 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.

On appeal, the petitioner claims that he is member of the "Guizhou Batik Art Association." The record, however, includes no evidence of the petitioner's individual membership status in this association. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the record contains no evidence of the bylaws or official membership requirements of the Guizhou Batik Art Association to demonstrate that admission to membership requires outstanding achievement or that individuals are evaluated by national or international experts in consideration of their 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.<sup>2</sup>

On appeal, the petitioner submits what he alleges is the cover of a publication about him, relating to his work. An English language translation accompanying the book cover states that it was “[p]rinted in January 2005.” This evidence cannot be accepted because it came into existence subsequent to the petition’s filing date. A petitioner 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 of this publication’s substantial national or international readership.

In this case, there is no evidence showing that the petitioner has earned sustained acclaim in the national media of the United States or China.

*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 professional artists is of far greater probative value than serving as a judge for a local competition involving children.

On appeal, states: “I had been invited to be a judge of 2001 National Youth Batic [sic] Design Competition.” The record, however, includes no evidence of this invitation or the petitioner’s attendance at the event.<sup>3</sup> As noted previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. Further, the plain wording of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” An invitation is not tantamount to “participation.” Without evidence showing that the petitioner’s activities at this competition involved evaluating professional artists at the national 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 submits various photographs of what are alleged to be his artistic creations, but the specific venues where these items were displayed have not been identified. In fact, there is no evidence (such as an event program or art brochure) confirming the petitioner’s involvement in any art exhibition or showcase in

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<sup>2</sup> 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.

<sup>3</sup> It is noted that the petitioner has been unlawfully present in the United States since 1996. Therefore, it is unlikely that he would have departed the United States to attend this competition in 2001. Furthermore, Part 3 of the Form I-140 petition indicates “12/95” (rather than 2001) as the date of the petitioner’s last arrival in this country.

the U.S. or China. As noted previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165.

It must be stressed that an artist does not satisfy this criterion simply by arranging for his or her work to be displayed or sold. In this case, the petitioner has not submitted evidence demonstrating that his works have been displayed at significant national venues. Nor is there any indication that the petitioner's works have 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 exclusive venues devoted largely to the display of his work 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 artists.

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

On appeal, the petitioner submits what he alleges is a receipt (dated October 7, 2004) showing an amount of "One hundred thousand RMB Yuan" for "5,000 pieces of [the petitioner's] Chinese Traditional Paintings on Flowers and Birds." This receipt came into existence subsequent to the petition's filing date. As noted previously, a petitioner must establish eligibility at the time of filing. *See Matter of Katigbak* at 45. There is no evidence showing the petitioner's actual earnings for any given period of time prior to the petition's filing date. Aside from the issue of the date that the evidence came into existence, there is no evidence establishing the authenticity of this handwritten receipt. For example, the record includes no credible documentation such as an income tax form showing that this money was reported to the U.S. Internal Revenue Service or its Chinese equivalent, or a bank statement reflecting deposit of the proceeds from the sale.

The plain wording of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." In this instance, the petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field.

In view of the foregoing, we concur with the director's finding that the petitioner has failed to demonstrate that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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 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).

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.