

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

FILE:

[REDACTED]
EAC 04 106 51732

Office: VERMONT SERVICE CENTER

Date: SEP 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 Jolusa

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

This petition, filed on February 25, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a painter. 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 1996. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, 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.

In a February 18, 2004 letter accompanying the petition, the petitioner claims to have received an Excellent Award in the Combination Exhibition of Sichuan & Shandong (1991), a First Grade Award in the 5th National Spring Festival Pictures Exhibition, and an Excellent Award in the 3rd National Folk Art Proseminar (1994). The record, however, contains no evidence of these awards. 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)).

In response to the director's request for evidence, the petitioner submitted certificates and accompanying English language translations indicating that she received awards from the "People's Government of Chongqing City" (1992) and the "People's Government of Beijing" (1996). These awards reflect local recognition rather than national or international recognition. There is no evidence from the awarding entities or print media to establish that these awards are nationally or internationally recognized visual arts awards. Furthermore, 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 addition to the above deficiencies, the record contains no evidence showing that the petitioner has received significant artistic awards subsequent to 1996. The absence of such awards suggests that the petitioner has not sustained whatever acclaim she 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.

In the February 18, 2004 letter accompanying the petition, the petitioner claims that she was selected as member of the China Folk Artists' Association (CFAA). The record, however, includes no evidence of the petitioner's individual membership status in the CFAA. 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. Furthermore, the record contains no evidence of the bylaws or official membership requirements of the CFAA to demonstrate that admission to membership requires outstanding achievement in the visual arts or that the petitioner was evaluated by national or international experts in consideration of her admission to membership.

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

The petitioner submitted evidence of her alleged authorship of a twelve-sentence article appearing in *The Epoch Times* on October 24, 2003. There is no evidence of the artistic community's reaction to this brief commentary, nor any indication that it was widely viewed as significantly influential. Furthermore, without quantitative evidence showing that *The Epoch Times* has significant national or international readership, we cannot conclude that the petitioner's article meets this criterion.

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

It must be stressed that an artist does not satisfy this criterion simply by arranging for her work to be displayed; otherwise most, if not all, visual artists would satisfy this criterion, rendering it meaningless. In this case, the petitioner has not submitted evidence showing that her 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 her regular participation in shows or exhibitions at major venues devoted to the display of her 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 her 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.

In response to the director's request for evidence, the petitioner submitted a partially legible certificate allegedly issued by the "Department of Art Products Cultural Market Development Center, Ministry of Culture, The People's Republic of China." The petitioner claims that this certificate shows the price of her work per square meter. The certificate was not accompanied by a full translation, nor was it certified by a translator in accordance with the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, there is no evidence showing that the petitioner actually earned the "evaluation price" stated on this certificate as a result of selling her paintings. Without evidence showing that the petitioner actually received significantly higher remuneration than that of other professional artists, we cannot conclude that she meets this criterion.

On appeal, the petitioner submits a letter allegedly issued by Hou Shi Wu of the Mianzhu Spring Festival Painting Museum (no address provided). The second paragraph of Hou Shi Wu's letter describes the petitioner as a successful painter, but it fails to demonstrate the petitioner's sustained national or international

acclaim. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. We cannot ignore an obvious discrepancy in the third paragraph of Hou Shi Wu's letter, which states: "The audiences who have seen her performance and I [sic] are quite impressed by her Dancing." The petitioner in this case claims to be a painter rather than a dancer. 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.

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." Subsequent to her arrival in 1996, there is no evidence showing that the petitioner's primary occupation in the United States involves artwork. For example, there is no documentation showing that the petitioner has sold any paintings in the U.S., or displayed her works at reputable galleries or public museums in this country.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case 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 as a painter 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 his 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.

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.