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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 16 2006**

EAC 05 126 52423

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.

Robert P. Wiemann, Chief  
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 with a finding of fraud.

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.

On June 1, 2006, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he misrepresented the artistic accomplishments of other individuals as his own.

The AAO's June 1, 2006 notice stated:

You signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct."

\* \* \*

8 C.F.R. § 204.5(h)(3)(iii) calls for the submission of 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. You submitted what is alleged to be an article written by [REDACTED] entitled "Interview with [REDACTED]" that appeared in a 2001 issue of *American Art Glass Quarterly*. After further investigation, it has been determined that this article was a fraudulent submission. The AAO was able to obtain the original article at <http://www.chihuly.com>. The original article, entitled "Interview with [REDACTED]" rather than "Interview with [REDACTED]" and which did not mention your name, appeared in *American Art Glass Quarterly*, Volume 3, No. 1, 1985. In this instance, you falsely substituted your name into an article about Dale Chihuly.

8 C.F.R. § 204.5(h)(3)(vi) calls for evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. In support of your petition, you submitted what are alleged to be articles written by you appearing in *People Daily News* (September 29, 1990), *Contemporary Glass Artists and Their Work* (1995), and an unnamed publication from 2004. After further investigation, it has been determined that:

1. The September 29, 1990 article in *People Daily News* . . . was originally written by [REDACTED] and appeared in a September 29, 1971 issue of *The New York Times*. The AAO was able to obtain the original article at <http://www.chihuly.com>.
2. The 1995 article in *Contemporary Glass Artists and Their Work* of which you claim authorship was originally written by [REDACTED]. The AAO was able to obtain the original article from his website at <http://www.chihuly.com>.

3. The article entitled "Sunny Wang Glass 2004" of which you claim authorship included material originally written by Sunny Wang and can be accessed at <http://koru-hk.com>. The original version of this article was entitled "Sunny Wang Glass 2004."

In the preceding instances, you altered original material written by Rita Reif, Dale Chihuly, and Sunny Wang and then misrepresented their material as your own work. You falsely substituted your name into their articles and plagiarized their work.

You submitted what is alleged to be the cover of a book that you authored entitled *The Spectacle of Beauty of the Glass Work*. You also submitted what is alleged to be a "description" of this book and its author. After further investigation, it has been determined that this description relates to Dale Chihuly rather than yourself. The AAO was able to obtain the original material at <http://www.chihuly.com> and <http://shop.store.yahoo.com/portlandpress.chihovvenpar.html>. In this instance, you misrepresented the achievements of Dale Chihuly as your own.

8 C.F.R. § 204.5(h)(3)(vii) calls for evidence of the display of the alien's work in the field at artistic exhibitions or showcases. You submitted promotional material dated October 7, 2004 for what is alleged to an exhibition entitled "Sunny Wang Glass 2004, Houston, TX." After further investigation, it has been determined that this promotional material was for an exhibition of Sunny Wang's work in Hong Kong rather than your work in Houston. The AAO was able to obtain the original material at <http://koru-hk.com>. You also submitted what are alleged to be images and descriptions of your exhibited artwork. After further investigation, it has been determined that the artwork shown is Dale Chihuly's rather than your own. The AAO was able to obtain the original material at <http://www.okcmoa.com>. In the preceding instances, you misrepresented the artistic creations of Dale Chihuly and the exhibition of Sunny Wang's work as your own.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above derogatory information indicates that you have misrepresented the accomplishments of others as your own. For this reason, we cannot accord any of your other claims any weight.

The evidence of record, outlined above, indicates a consistent and pervasive pattern of misrepresentation of material claims. Our modest inquiry reveals that the record contains a significant quantity of fraudulent documents. If you choose to contest the AAO's findings, you must offer independent and objective evidence from credible sources addressing, explaining, and rebutting all of the discrepancies described above.

The petitioner was afforded thirty days in which to submit evidence to overcome the derogatory information cited above. The petitioner failed to respond to the AAO's notice.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By filing the instant petition and submitting the aforementioned falsified materials, the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of material facts. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our findings that he misrepresented his past accomplishments, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. As stated above, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho* at 582, 591-92. The remaining documentation and the director's bases of denial will be discussed below.

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 28, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a sculptor, decorating expert, and designer. 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 2000. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than four 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 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 the following:

1. Certificate stating that the petitioner's "artwork of color . . . won second place in the first annual art festival in Jinlin Province" (October 1989)
2. Certificate from the "Public Affair Department of Jilin Province" stating that the petitioner was chosen as "one of the Talented Young Artists" (December 1997)
3. Certificate of encouragement issued by the "Jilin Government" stating that the petitioner's work "Chinese Dragon" . . . made a great impact" at the 11<sup>th</sup> Annual Culture Art Exhibition (December 1997)
4. Certificate from the "News Publishing Department of the People's Republic of China" (January 2000) stating: "After careful review of your work Joy and the photos you submitted for the new millennium photography competition, I am very pleased to announce that your work has won the best display award."
5. Certificate from the "Contemporary Art Association of the People's Republic of China" stating that the petitioner's glasswork "Kindness" won the "outstanding award" at an unidentified exhibition in June 2000
6. Certificate stating that the petitioner's "glasswork 'Scenery' . . . won the first place in the Millennium Luxury Architect Design Competition" (January 2000)
7. Certificate stating that the petitioner's artwork won an "outstanding award at the 4<sup>th</sup> Art Festival in Jinlin Province" (October 1992)
8. Certificate stating that the petitioner "won the Outstanding Achievement Award" presented by the "Jilin Government" (December 1997)
9. "Honor Certificate" from the "Jilin Government" stating that the petitioner was appointed as "one of the top ten young artists in the nation" (August 1998)
10. "Honor Certificate" stating that the petitioner's "glass sculpture skill . . . won the first place in the 4<sup>th</sup> national exhibit competition" (August 2000)

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 items 1, 2, 3, 7, 8, and 9, we find that these awards reflect provincial recognition rather than national or international recognition.

In regard to items 2 and 9, we find that such "young artist" awards offer no meaningful comparison between the petitioner and the most experienced and practiced sculptors. There is no indication that the petitioner faced competition from throughout his entire field, rather than his approximate age group within that field. These awards are not an indication that the petitioner has reached the "very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

In response to the director's request for evidence, the petitioner submitted a document entitled "Chinese modern glass art unfolds 2000 (Beijing) the national outstanding works exhibition the match announcement." This document provides information related to a glass competition in Beijing sponsored by the "Chinese construction glass and industry glass association." The first line under the title states: "time: In June 2000 8<sup>th</sup> – 14<sup>th</sup>." This date and the date appearing in the title of the document contradict a date appearing in a sentence within the first paragraph of the document which states: "The Chinese construction glass and industry glass association in April, 2004, will conduct 'the Chinese modern art nation outstanding works in Beijing the match.'" Both the original document and its accompanying non-certified English language translation contain this date discrepancy. As stated previously, 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. See *Matter of Ho* at 582, 591-92. In this instance, there is no competent objective evidence showing that this competition took place in 2000 or that the petitioner was an actual participant.

In regard to items 1 through 10, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence showing that the certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. In this case, there is no supporting documentation from the awarding entities or the print media to establish that the petitioner's awards are nationally or internationally recognized awards.

In addition to the above deficiencies, the record includes no evidence showing that the petitioner has received any awards subsequent to 2000. The absence of awards in recent years indicates that the petitioner's acclaim has not been sustained. The petitioner has not established that he meets this criterion.

*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 certificates reflecting his appointment as a board member of the Chinese Art Association (August 2000) and the Art Association of Jilin Province (September 1997). There is no evidence showing the duration of petitioner's appointments or whether he remains an active member of these organizations. Further, the record does not include the membership bylaws or the official admission requirements for the Art Association of Jilin Province.

In response to the director's request for evidence, the petitioner submitted a document entitled "Chinese artist association" which cites that organization's "draft" regulations. We cannot accept this evidence, however, because the English language translation accompanying the document was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The evidence submitted by the petitioner fails to show that admission to membership in the preceding associations required outstanding achievement or that he was evaluated by national or international experts in consideration of his admission to membership. The petitioner has not established that he meets this criterion.

*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>1</sup>

The petitioner submitted what he alleges is an article that appeared in the September 29, 1990 issue of *People Daily News*. The petitioner also submitted what he alleges is an article from 2001 appearing in *American Art Glass Quarterly*. After further investigation, the AAO determined that these articles were fraudulent submissions. For example, the falsified *People Daily News* article dated September 29, 1990 was actually an article about Dale Chihuly (rather than the petitioner) that appeared in a September 29, 1971 issue of *The New York Times*. On June 1, 2006, the AAO requested the petitioner to submit independent and objective evidence to overcome the AAO's findings. The petitioner failed to respond to the AAO's notice.

There is no evidence showing that the petitioner has been the primary subject of published material in major media. The petitioner has not established that he meets this criterion.

*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 what is alleged to be an article that he wrote appearing in *Contemporary Glass Artists and Their Work* in 1995. The petitioner also submitted what is alleged to be an article that he wrote entitled "[The petitioner] Glass 2004." The name of the publication in which the latter article appeared has not been identified. The petitioner also submitted what he alleges is evidence of his authorship of a book entitled *The Spectacle of Beauty of the Glass Work*. After further investigation, the AAO determined that these documents were fraudulent submissions. On June 1, 2006, the AAO requested the petitioner to submit independent and objective evidence to overcome the AAO's findings. The petitioner failed to respond to AAO's notice. The petitioner has not established that 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 images and descriptions of his exhibited artwork. The petitioner also submitted what is alleged to be an October 7, 2004 announcement for an exhibition of his work at the Contemporary Arts Museum/Modern Art Gallery of Houston, Texas in October 2004. The record, however, includes no information about this museum or evidence from an official representative of the museum confirming its display of petitioner's work. After further investigation, the AAO determined that the preceding materials were fraudulent submissions. On June 1, 2006, the AAO requested the petitioner to submit independent and objective evidence to overcome the AAO's findings. The petitioner failed to respond to AAO's notice.

The specific names, dates, and locations of the petitioner's other exhibitions and showcases have not been identified. Nor has the petitioner submitted contemporaneous evidence of his participation in any other exhibitions in the form of event programs or art brochures.

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<sup>1</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.

In this case, there is no evidence demonstrating that the petitioner's 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 petitioner has not established that he meets this criterion.

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).

The petitioner's appeal was filed on November 28, 2005. The appellate submission was accompanied by supporting evidence (which has been addressed in 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 eight 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 statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record includes 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 with a finding of fraud.

**FURTHER ORDER:** The AAO finds that the petitioner knowingly submitted fraudulent documents in an effort to mislead CIS and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States.