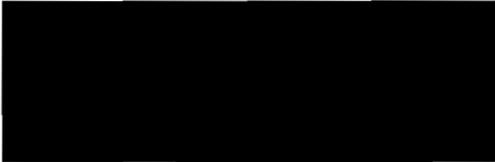




U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 27 2006**

EAC 05 006 50705

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:



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, 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 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. On appeal, counsel submits a brief and additional evidence, which do not overcome the deficiencies of the petition. The appeal will be dismissed for the following reasons.

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).

We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. Counsel does not claim that the petitioner is eligible 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 a copy of a "Certificate of Honor" for the selection of one of her pieces to be included in "Selected Works of Chinese Calligraphers," to be jointly published by the China Nationalities Photographic Art Publishers and the Han Tang International Art Publishers. The certificate is dated 2002 and also informs the petitioner that she has been "awarded the title of honor of 'Outstanding Artist Collected in the 'Selected Works of Chinese Calligraphers.'" The petitioner submitted no evidence of the actual publication of her work in this book. On appeal, the petitioner submits copies of excerpts purportedly from the "Selected Works of Chinese Calligraphers," but the excerpts were submitted with only partial, handwritten notations in English. Because the petitioner failed to submit 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). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. In addition, the petitioner submitted no evidence regarding the selection criteria for, or the national significance of, inclusion in this publication. Consequently, the record does not persuasively establish that the petitioner's "Certificate of Honor" is a nationally recognized prize or award for excellence in her field.

The petitioner submitted copies of two certificates stating that her calligraphic work won an "Outstanding Prize" and a "Bronze Prize" in the First Huachen Cup National Elementary and Secondary School Outstanding Art Competition. The China Education Press Training Center issued these certificates on October 15, 2001. The petitioner also submitted copies of two "Certificates of Merit" dated May 1, 2003 and stating that her Traditional Chinese Style painting entitled "Lotus Flowers" won "Third Prize" and her Xing style Chinese calligraphy won "Second Prize" in the 2003 National Teachers Art and Calligraphy Competition sponsored by the Art Education Institute of the China Education Society. The record contains no explanation or documentation of the significance of these four prizes. Although the competitions are titled "national," the record is devoid of any evidence that the petitioner's prizes in this competition were consistent with national acclaim as a professional artist at the top of her field, rather than as an outstanding elementary or secondary school art teacher. In addition, the petitioner submitted no evidence, for example, that artists at the top of their fields in China enter these competitions. Accordingly, these certificates do not meet this criterion.

The record contains a partial translation of an article published in the *Changning Times* (identified by the translator as a newspaper from Shanghai) on May 6, 2004, which purportedly reports the petitioner's receipt of these prizes and notes the collection of her work in the "Selected Works of Chinese Calligraphy" and her receipt of the "Second Prize" at the "2003 National Han Writing Standardization Contest." Neither counsel nor the petitioner clarify whether the "2003 National Han

Writing Standardization Contest” is the same competition or was part of the event translated as the “2003 National Teachers Art and Calligraphy Competition” on her “Second Prize” certificate. Regardless of this apparent discrepancy, the English translation of the *Changning Times* article is incomplete and the attached “certification of accuracy” is unsigned by the translator. Documents in a foreign language that are submitted to CIS must 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.” 8 C.F.R. § 103.2(b)(3). Even if the article had been submitted with a complete and properly certified translation, the record does not indicate that the *Changning Times* is a nationally circulated newspaper in China and the petitioner submitted no other evidence that the brief mention of her achievements in one article in this newspaper is consistent with sustained national acclaim in China.

The petitioner also submitted copies of three letters inviting her to enter her work in an art exhibition, art competition, and a collection of contemporary poetry. As the petitioner claims to be a painter and calligrapher, not a poet, the latter invitation is irrelevant to her case. The first two invitations reflect her recognition as an artist, but the record contains no evidence that the petitioner actually entered her work and won nationally recognized prizes or awards for excellence in her field at the referenced exhibition and competition.

On appeal, counsel claims that most of the petitioner’s awards meet this criterion because “[t]hey speak for themselves – either from their title, or from the nature of the award.” To the contrary, the mere appellation of an award as “national” or “international” does not mean that the award is nationally or internationally recognized in an alien’s field. As discussed above, the record is devoid of any corroborative evidence regarding the purported national recognition of the petitioner’s honors.

The petitioner did not initially submit evidence of her receipt of any international prizes or awards. On appeal, the petitioner submits a copy of an “Honorable Award Certificate” issued to the petitioner on July 26, 2000 and stating that the petitioner’s Chinese Brush Painting, “Peony,” was selected for exhibition in the 2000 World Chinese Art Exhibition and won the “Gold Award.” Again, the record contains no evidence regarding the selection criteria for this exhibition or corroborative evidence of the national or international recognition of the petitioner’s “Gold Award.” Even if the certificate alone were sufficient to show the national or international recognition of the petitioner’s award, her receipt of this single honor over four years before this petition was filed does not demonstrate the requisite sustained acclaim.

On appeal, the petitioner submits additional evidence of her more recent achievements, including her appointment as an “Honorary Director of the Board of Directors” of *China Arts* magazine. We cannot consider this evidence because it arose after the petition was filed. 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). 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 did not initially claim eligibility under this criterion. On appeal, the petitioner submits evidence that she is a member of the "China Artiest [sic] Association of Painting and Calligraphy" and the World Association of Artists. Again, we cannot consider this evidence because it arose after the petition was filed. 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), *Katigbak*, 14 I&N Dec. at 49. We note that the record contains no evidence that outstanding achievements, as judged by recognized national or international experts, are prerequisite to membership in either of these associations. In a letter dated July 25, 2005, counsel states that the "China Artiest [sic] Association of Painting and Calligraphy is a professional organization whose membership is open to only those artists with outstanding achievements in the named fields." Yet the record contains no evidence to corroborate counsel's statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 record contains an untranslated excerpt purportedly from the "Collection of Selected Works of Chinese Famous Calligraphers" and the incomplete and unsigned translation of an article from the *Changning Times*. Because the petitioner failed to submit complete and certified translations of these documents, we cannot determine whether the evidence supports the petitioner's 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. The record contains no other documentation of published material about the petitioner and her work. Consequently, 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.

On appeal, counsel cites four recommendation letters from individuals who have taught or worked with the petitioner as evidence of her eligibility under this criterion. 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 or her field beyond the limited number of individuals with whom he or she 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

While they all praise the petitioner's artistic talent and skills, Mr. ■■■, Mr. ■■■, Ms. ■■■ and Mr. ■■■ do not discuss any specific accomplishments of the petitioner that have made original contributions of major significance to her field. While Mr. ■■■ and Mr. ■■■ mention the petitioner's "national" prizes or awards, the record does not establish the national recognition of her honors (as discussed above under the first criterion) or indicate that her prize-winning work had a major impact on her field consistent with sustained national or international acclaim. Similarly, while Ms. ■■■ states that the petitioner's former students are now "rising calligraphers or artists" across China, the record contains no documentation of significant achievements by any of the petitioner's students or other evidence that the petitioner has made original, major contributions to the field of art education in China.

The petitioner submitted black and white printouts of images purported to be her paintings and calligraphy, but the record contains no evidence that these images were published or that they are attributable to her. The calligraphy and the inscriptions on some of the paintings are untranslated. On appeal, the petitioner submits an untranslated excerpt of her work purportedly published in the "Collection of Selected Works of Chinese Famous Calligraphers." As explained above under the third criterion, 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). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. On appeal, the petitioner submits documentation of her recent achievements, but we cannot consider this evidence because it arose after the petition was filed. 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), *Katigbak*, 14 I&N Dec. at 49. The record is devoid of any other evidence that the petitioner has, for example, received critical acclaim for her work, influenced other leading artists in China or abroad, or otherwise made original artistic contributions of major significance to her field in a manner consistent with sustained national or international acclaim. 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 indicates that the petitioner's work won prizes at the 2003 National Teachers Art and Calligraphy Competition and the First Huachen Cup National Elementary and Secondary School Outstanding Art Competition in 2001. The petitioner did not submit evidence that these competitions included exhibitions of the submitted or prize-winning works, the petitioner's inclusion in which might demonstrate sustained national acclaim.

On appeal, the petitioner submitted a certificate stating that one of her paintings had "been selected to be exhibited in the 2000 World Chinese Art Exhibition," but did not submit evidence of the actual exhibition. The petitioner also submitted invitations for her to enter her work in various competitive exhibitions, but submitted no evidence of her actual participation in any of these shows. We cannot consider the three additional invitations submitted on appeal because they arose after the petition was

filed. Again, 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.

On appeal, counsel contends

Petitioner submitted more than enough evidence in regard to her works being displayed at various exhibitions throughout China. Most of the exhibitions are “notable artistic venues.” Further, numerous works, particularly her calligraphic creations, have entered the collection of institutions and private individuals. These collections typically took place at or after public exhibitions; and are themselves displays of Petitioner’s works to some degree.

The record does not support counsel’s statements. The record contains no evidence of the actual display of the petitioner’s work at any venue. The petitioner’s four certificates for prizes awarded at the 2003 National Teachers Art and Calligraphy Competition and the First Huachen Cup National Elementary and Secondary School Outstanding Art Competition in 2001 do not state that any exhibitions were conducted in connection with the competitions. Similarly, despite the petitioner’s “2000 World Chinese Art Exhibition Honorable Award Certificate,” the record is devoid of any documentation of this exhibition. The record also fails to document the collection of the petitioner’s work by any institutions or private individuals. Counsel’s claims are entirely unsupported by the record. Again, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534; *Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506. Accordingly, the petitioner does not meet this criterion.

The Petitioner’s Intention to Continue Working in Her Area of Expertise in the United States

Beyond the director’s decision, the record does not establish that the petitioner intends to continue working as a traditional Chinese painter and calligrapher in the United States. Section 203(b)(1)(A)(ii) of the Act requires the alien to demonstrate that he or she “seeks to enter the United States to continue work in the area of extraordinary ability.” Although neither an offer for employment in the United States nor a labor certification is required for immigrant classification as an alien with extraordinary ability,

the petition must be accompanied by 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.

8 C.F.R. 204.5(h)(5). The petitioner submitted no such evidence. The record contains no letters from prospective employers, prearranged commitments or a detailed statement from the petitioner. On appeal, the petitioner submitted a letter dated September 12, 2005, in which she explains, “I only

wanted to admit [sic] students to teach the Chinese painting and calligraphy for them in America. Because I thought the children of the overseas Chinese and the retirees of the overseas Chinese would learn the Chinese arts. But that's not the case. There are many troubles." The petitioner does not explain how she nonetheless intends to continue working in her field in the United States. Accordingly, she has not demonstrated her eligibility pursuant to section 203(b)(1)(A)(ii) of the Act.

Request for Evidence

On appeal, counsel claims that the director's decision was improper because he failed to issue a Request for Evidence (RFE). Pursuant to CIS policy, an application or petition may be denied without issuance of an RFE when the record contains evidence of clear ineligibility or the record is complete and the case is approvable. Memo. of William R. Yates, Assoc. Dir. of Operations, CIS, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)*, 2-3 (Feb. 16, 2005). In all other situations, "such as when the evidence raises underlying questions regarding eligibility or does not fully establish eligibility, issuance of a RFE or NOID is usually discretionary but strongly recommended." *Id.* at 3. However, CIS policy and the regulation at 8 C.F.R. § 103.2(b)(8) do not require the director to issue an RFE in every potentially deniable case.

Moreover, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Regardless of whether or not an RFE should have been issued in this case, the burden of proof in these proceedings lies solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Counsel states various reasons why certain evidence was not submitted¹, but none of his explanations absolve the petitioner's burden of proof.

Director's Comments Concerning "Some Chinese Cultural Companies" in Flushing, New York

In his decision, the director stated:

[T]his service has also discerned that some Chinese cultural companies, many located in the borough of Flushing in New York City and claiming to do business in the United States,

¹ For example, in his cover letter accompanying the petition, counsel stated, "There are some other supporting materials. However, since they are all in Chinese, and we don't have the manpower to help translate, we have returned them to Ms. [REDACTED]. On appeal, counsel states, "Since those who best qualify to comment upon Petitioner's works happen to be Chinese-speaking authorities in Chinese painting, material about these critics and commentators, although abundant, are also in Chinese, making translation too voluminous, time-consuming and cost-prohibitive."

abandoned both immigrant and nonimmigrant petitions when questioned about the bona fides of their businesses. Therefore, this casts your alleged chosen profession in a dubious light owing to your address in the United States.

With her Form I-140, the petitioner submitted no evidence that she was associated with any Chinese cultural company located in Flushing, New York. On appeal, she submitted documents from the World Culture Alliance at [REDACTED] in Flushing, New York, but we have not considered this evidence because it arose after the petition was filed. Denial of this petition cannot be based upon the serious allegations of the director without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 n. 2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The director's comments were inappropriate and are hereby withdrawn.

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 record in this case does not establish that the petitioner has achieved sustained national or international acclaim as an artist placing her at the very top of her field. The record also does not demonstrate that the petitioner seeks to enter the United States to continue working in her area of expertise. She 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 her petition may not be approved.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.