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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 05 132 50683

Office: VERMONT SERVICE CENTER

Date: NOV 01 2006

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.

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.

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 April 4, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a fashion designer. The statute and regulations require the petitioner's acclaim to be sustained. According to the Form I-140 petition, the petitioner has been residing in the United States since September 2001. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than three 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 a fashion designer 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 response to the director's notice of intent to deny, the petitioner submitted a "Certificate of Glory" allegedly issued by the Foreign Economy and Trade Committee, People's Republic of China, stating: "[The petitioner] has designed fashions with novelty and various styles, he has made great contribution to the exportation of apparel. After approval from State Council, he is awarded the title of Talented Person for Development in the year 1998."

There is no evidence of contemporaneous publicity surrounding this award or evidence showing that it commands a substantial level of recognition. Further, the record includes no evidence that would demonstrate the number of recipients, the geographic area from which the individuals eligible for consideration for this award were drawn from, the criteria for granting the award, the level of expertise of those considered, and the number of individuals eligible to compete. 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 awards presented under this criterion enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entity or print media to establish that the petitioner's award is nationally or internationally recognized.

In addition to the preceding deficiencies, there is no evidence showing that the petitioner has received any prizes or awards in recent years. The absence of such evidence indicates that the petitioner has not sustained whatever acclaim he may have earned while in China.

In light of the above, 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 general, 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.¹

¹ 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.

On appeal, the petitioner submits an article entitled "Aesthetic Consciousness Lead to Nicety of Work" allegedly published in the August 1, 2005 issue of *Journal of Life*. This article was published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, the AAO will not consider this article in this proceeding. Nevertheless, there is no evidence showing that *Journal of Life* qualifies as major media. The petitioner has not established that he meets this criterion.

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. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends 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 response to the director's notice of intent to deny, the petitioner submitted a "Certificate of Employment" allegedly issued by the "Jiangsu Provincial Committee of Professional Titles Appraisal" stating that he "was employed as appraiser of Leading Group for Advanced Titles Appraisal for Apparel Production Enterprises for the year 2000 in Jiangsu Province." This document includes no address, phone number, or any other information through which this committee may be contacted. Further, the plain wording of this criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." The record, however, includes no evidence of the petitioner's activities as an appraiser for this organization. For example, the record lacks information regarding the specific nature of his duties in this capacity, the names of the individuals he evaluated, and their level of expertise. Further, we do not find that performing appraisals at the provincial level demonstrates sustained national or international acclaim. Without evidence showing that the petitioner's activities involved evaluating experienced professionals at the national or international level, we cannot conclude 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.

On appeal, the petitioner submits the text for an article that he claims to have published in *Anthology of Apparel Aesthetics* (2000). The record, however, includes no evidence of his published article as it appeared in this publication. 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)). Nor is there evidence showing that *Anthology of Apparel Aesthetics* qualifies as major media. Further, the record includes no evidence of the field's reaction to the petitioner's article, nor any indication that it is widely viewed as significantly influential. Thus, 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.

On appeal, the petitioner submits a January 22, 2006 letter of support from [REDACTED] who states that she has worked in the "apparel industry for decades." [REDACTED]'s letter, however, does not adequately detail her own work experience and qualifications in the fashion industry. She states: "When I was in China, [the petitioner] impressed me deeply in Guangzhou Foreign Trade Fair, because he is a talented and young self-made apparel designer." The record, however, includes no contemporaneous evidence showing that the petitioner displayed his work at the Guangzhou Foreign Trade Fair, nor is there evidence establishing the significance of this venue. 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 at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). Although the petitioner claims to be a fashion designer, the record includes no evidence showing that his work has been displayed at national or international fashion shows. The petitioner has not established that he meets this criterion.

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 notice of intent to deny, the petitioner submitted a February 15, 1997 "Employment Agreement" allegedly issued by the "Apparel Factory of Jin Yun County" stating: "[The petitioner] is employed as advisor of apparel design for this factory from March 1, 1997. During his tenure of office . . . his remuneration is U.S. \$10,000 per month." This employment agreement, however, includes no address, phone number, or any other information through which an official of this factory may be contacted. Nor is there supporting financial documentation (such as payroll records or income tax forms) showing the petitioner's actual earnings for any given period of time. Further, the plain wording of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner earns a level of compensation that places him among the highest paid fashion designers in the United States or China. Thus, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

The petitioner's appeal was filed on January 27, 2006. 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, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than nine 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.