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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 06 011 51581

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:
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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 September 29, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a porcelain 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 September 14, 1996. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than nine 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 of Honor" issued jointly by the Hubei Province Department of Culture, Hubei Province Art Organization, and Hubei Artist Association stating that the petitioner's artwork entitled "Jiangnan Nice View" won a "Silver Award" at the 10th Art Exhibition of Hubei (July 2004)
2. Certificate issued by the "China Department of Folk Industry" conferring the petitioner with the title "China folk industrial & art artist master of 1994"
3. Certificate issued by the China Artists' Association conferring the petitioner with the title "outstanding individual during 1994-1995" (July 1996)
4. Certificate conferring the petitioner with the title "'Folk Art Master' of Liaoning Province" (October 12, 1995)¹
5. Certificate issued by the "China Department of Culture" stating that the petitioner's artwork won "second place in the 2000 'Yongs Cup'" (October 2000)
6. Certificate stating that the petitioner's product "'Spring' won the Excellent Award in Exhibition of Industrial & Art Perfect Products" (November 1995)
7. "Certificate of Honor" stating that stating that the petitioner's artwork "won the excellent award" at the "1999 China Art Exhibition" (July 1999)
8. Undated certificate stating that the petitioner's artwork "won the Copper Medal in the 'Gold Roster' Travel products and Industrial Artwork Design Contest"
9. Certificate of appreciation issued by the "Cultural Bureau of Shandong Province" reflecting the petitioner's participation the "Cultural Collections Exhibition" (December 1995)
10. Certificate issued by the "Cultural Bureau of Hubei Province" stating that the petitioner's artwork won an "Outstanding Award in Cultural Festival of Hubei Province" (October 1993)
11. Certificate issued by the "State Department of China" stating that the petitioner was awarded a "Government Special Allowance" (October 1992)
12. "Honor Certificate" issued by the "Art Industry Association of Jiangshu Province" stating that the petitioner's artwork won a "Committee Special Award in the 1994 Exhibition of History, Culture, Art in Nanjing, China" (May 1994)
13. "Honor Certificate" issued by the "Cultural Department of Anhui Province" stating that the petitioner's artwork won a third place award at the "Forth [sic] Session of Art, Photographic Works Exhibition of Anhui Province" (October 1991)
14. Certificate stating that the petitioner's artwork won a first place award at the "Second Session of Industrial Art Festival of Anhui Province" (September 1993)

¹ This certificate was submitted at the time of filing, in response to the director's notice of intent to deny, and on appeal.

15. Certificate stating that the petitioner's artwork won a Golden Award at the "Fifty Fifth Anniversary of Chinese National Day – Artworks Exhibition Shanxi Province" (September 1990)

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to 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, 4, 9, 10, 12, 13, 14, and 15, we find that these awards reflect provincial recognition rather than national or international recognition.

In regard to items 1, 5, and 7, we note that these certificates were allegedly issued to the petitioner in China in July 2004, October 2000, and July 1999, respectively. The petitioner, however, has been present in the United States since September 14, 1996. 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.

In regard to items 1 through 15, there is no evidence of contemporaneous publicity surrounding these awards or evidence showing that they command a substantial level of recognition. Further, the record includes no evidence that would demonstrate the number of recipients, the criteria for granting the awards, 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 entities or print media to establish that the petitioner's awards are nationally or internationally recognized.

On appeal, the petitioner submits a document entitled "Determine real folk industrial & art crafts expert." We cannot accept this document as evidence, however, because the English language translation accompanying it was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the source of this document has not been identified.

In light of the above, 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 what is alleged to be his membership certificate (issued in August 1996) for the China Artists' Association (CAA). There is no evidence showing the duration of petitioner's membership or whether he remained active in this association in recent years. Further, the record does not include the membership bylaws or the official admission requirements for the CAA. There is no indication that admission to membership in the CAA required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, 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.²

The petitioner submitted a brief biography consisting of a few sentences about him and his artwork. The title, date, and author of this material, however, were not identified as required by this criterion. Further, the English language translation accompanying the material was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nor has the petitioner submitted evidence showing that the publication in which this material allegedly appeared qualifies as major media. Thus, 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.

² 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.

The petitioner submitted photocopies of what are alleged to be the cover and pages from his book entitled *China Appreciation*. The English language translations accompanying this evidence were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that his book had substantial national or international readership. Nor is there any evidence of the greater field's reaction to this book, or 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.

The petitioner submitted three images of what are alleged to be his artistic creations. Without further evidence, it has not established that the petitioner's works are among those shown. The images of the petitioner's creations were not accompanied by contemporaneous evidence (such as an event program or art brochure) indicating the specific exhibition or showcase in which they appeared. In this case, there is no evidence demonstrating that the petitioner's works have been displayed at significant national or international venues. Nor is there any indication that the petitioner's works have been featured along side those of artists who have national or international reputations. Further, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his artwork alone.

In light of the above, the petitioner has not established that he meets this criterion.

In conclusion, we find that 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. Further, although the petitioner has resided in the United States since 1996, there is no evidence showing that he has sustained national acclaim in this country.

The petitioner's appeal was filed on March 17, 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 seven 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.