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FILE:

SRC 06 001 52573

Office: TEXAS SERVICE CENTER

Date: APR 20 2007

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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition and the matter 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, specifically as an oil painter. 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 stated that he would submit a brief or evidence to the AAO within 120 days. Counsel dated the appeal March 2, 2006. Over ten months later, on January 18, 2007, the AAO notified counsel that it had not received any further brief or evidence. On January 25, 2007, counsel notified the AAO that he had just returned from a business trip and requested five days to submit his brief and additional evidence. On February 15, 2007, the AAO directed counsel to submit his materials within five business days. To date, over a month later, the AAO has received nothing further from counsel.

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[ly] 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. Neither counsel nor the petitioner claims that the petitioner meets 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 an excerpt from "The Dictionary of the Achievements of World Chinese Artists" that purportedly summarizes the beneficiary's professional accomplishments, including his receipt of several awards. However, this excerpt is printed in Chinese and was submitted with an uncertified, English translation. Any document containing a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English 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). Because the petitioner failed to submit a certified translation of the document, we cannot determine whether the evidence supports the petitioner's claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner also submitted copies of the following certificates granted to the beneficiary:

- "Nomination" award at the Nineteenth Art Exhibition of the Japan Artists Association, dated July 4, 1993;
- New Artist Award at the Thirteenth Art Exhibition of the Arts Creation Association at the Tokyo Art Museum, dated July 11, 1993;
- Outstanding Work in the Fifth Art Exhibition of the North Capital Artists Association, dated May 4, 1994;
- Outstanding Work in the Fourteenth Art Exhibition of the Arts Creation Association at the Tokyo Art Museum, dated October 12, 1994;
- Outstanding Work in the Sixth North Capital Artists Association's Art Exhibition, dated June 18, 1995;
- Outstanding Work in the Arts Creation Association's Fifteenth Arts Exhibition, dated December 24, 1995; and
- First Prize at the Seventh North Capital Artists Association Art Exhibition, dated July 7, 1996.

The petitioner submitted no documentation of the selection criteria for these awards or other evidence that the honors are nationally or internationally recognized in the beneficiary's field. On appeal,

counsel states, “There isn’t any international oil painting competition like in violin, piano or vocalist [sic]. Only in Asian countries, artists are evaluated and awarded to [sic] a prize WITHIN a specific art exhibition” (emphasis in original). Even if counsel’s uncorroborated statement is true, the regulation does not require internationally recognized prizes or awards in the alien’s field. Rather, visual artists may satisfy this criterion through their receipt of nationally recognized awards for excellence in their field. In this case, counsel submits no evidence that the petitioner’s awards were nationally recognized in his field. In addition, the petitioner received these awards between nine and 12 years before this petition was filed. Hence, the awards do not demonstrate the requisite sustained acclaim. Consequently, 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 submitted a copy of his membership card for the “Shandong Artist of Young Association” dated December 1990. The record contains no documentation of the Association’s membership criteria or other evidence that the Association requires outstanding achievements of its members, as judged by recognized national or international experts in the alien’s field. To the contrary, the membership card indicates that the Association is a provincial organization for young artists.

The petitioner submitted no primary evidence of his membership in any other associations in his field. The aforementioned excerpt from the “Dictionary of the Achievements of World Chinese Artists” purportedly states that the petitioner is a member of two other artists’ associations, but as discussed in the preceding section, the excerpt was submitted without a certified English translation and cannot be considered. 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 copies of the following three articles:

- “‘Uncompromising Courage’ Organizers Offer Thanks to National Art[s] Club,” by [REDACTED] printed in *The Epoch Times* on November 24, 2004;  
“Eternity in an Hour,” by [REDACTED] printed in *The Epoch Times* on September 21, 2005;  
and  
“A Person of Vow – [REDACTED]’s Story,” by [REDACTED], published by [REDACTED] on its website in March 2005.

The first article discusses a ceremony held by the organizers of the “Uncompromising Courage” exhibition to thank the National Arts Club for hosting the show despite receiving threats of bombing if they displayed the artwork depicting aspects of *Falun Gong*. Although the article includes a picture of

one of the petitioner's paintings, the text of the article does not otherwise mention or discuss the petitioner's work. The article entitled "Eternity in an Hour" discusses the petitioner's work and career at length. However, the record contains no evidence that *The Epoch Times* is a nationally or internationally circulated newspaper or another form of major media. The third article, "A Person of Vow [REDACTED] Story," also discusses the petitioner's work and career in depth, but the record fails to establish that *Da Ji Yuan* is a professional, major trade publication or a form of other major media in China. Even if major media sources published these latter two articles, they would still be insufficient to meet this criterion. The record indicates that the petitioner has been working in his field since 1985. The publication of just two articles about the petitioner's work over the course of a career spanning two decades does not demonstrate the requisite sustained acclaim. Accordingly, 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.*

The record contains photographs of the petitioner's work, printouts from his website, excerpts from exhibition catalogues including the petitioner's paintings, the aforementioned articles about the petitioner's work and a recommendation letter from the former oil painter and current commercial artist and film director, [REDACTED]. The evidence shows that the petitioner has been active in his field and has received limited recognition of his achievements. The record does not establish, however, that the petitioner has made original artistic contributions of major significance to his field in a manner consistent with sustained national or international acclaim.

As noted above, the petitioner has not established the national or international significance of any of his awards and the record contains only two articles about the petitioner's work although he has been painting professionally for at least 20 years. As will be discussed below, the petitioner has exhibited his work in several countries, but the record contains no evidence that the work he has shown has made original contributions of major significance to his field.

[REDACTED] states that he first recognized the petitioner's talent in 1992 when the petitioner was working in Shandong Province in China. [REDACTED] states that after the petitioner moved to Japan in 1993, he recommended that the petitioner's work be collected by the Beijing Gallery, but the petitioner's work was not selected for "some political reason." [REDACTED] reports that the petitioner was "very successful" in Japan and his techniques "surpassed all the Chinese oil painting artists I know and [the] majority of [W]estern painters as well." [REDACTED] explains that after 1996 when the petitioner returned to classical painting, the petitioner's "style and subject of his painting took a leap and I have seen his techniques become almost perfect." [REDACTED] compares the petitioner's brushstrokes, lighting and structuring to that of [REDACTED] but he finds the petitioner's work to be even more expressive and accurate. [REDACTED] further states, "I am happy for [the petitioner's] achievement and that he did not waste his talent, yet I am very sad that his talent and achievement are not recognized by his peers for political pressure."

letter may explain why the petitioner is unable to submit evidence of the recognition of his achievements in China, but statements do not establish that the petitioner has made original contributions of major significance to his field. In his discussion of the petitioner's work, repeatedly praises the petitioner's technical skills, but does not describe any specific creative contributions made by the petitioner that are of major significance to his field, nor does he indicate that the petitioner's techniques alone have made original, major contributions to his field.

In sum, the relevant evidence fails to establish the petitioner's eligibility under this criterion.

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

The record contains excerpts from exhibition catalogues, three media articles, photographs and award certificates, which indicate that the petitioner has exhibited his work at significant venues in Japan, Italy, the United States and other countries from 1993 through 2005. Accordingly, the petitioner meets this criterion.

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 evidence in this case indicates that the petitioner is an accomplished oil painter who has exhibited his work in several countries. However, the record does not establish that the petitioner has achieved sustained national or international acclaim as an oil painter placing him at the very top of his field. He 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 his petition must consequently be denied.

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.