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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **MAR 13 2007**
LIN 05 239 51092

IN RE: Petitioner: [Redacted]
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:

[Redacted]

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.

Maui Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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.

On appeal, the petitioner argues that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on August 11, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an artist. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that her national or international acclaim has been sustained. The record reflects

that the petitioner has been residing in the United States since August 2000.¹ Given the length of time preceding the petition's filing date during which the petitioner resided in the United States (almost five years), it is reasonable to expect her 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 evidence showing that she was among four "youths" selected to receive a "Diploma of Honor . . . As 'Most Promising Artist 1982'" from the Authors and Artists of El Salvador Association (UGAASAL). This award is limited by its terms to competitors in the early stages of their career and excludes more experienced and established artists from consideration. There is no evidence showing that the petitioner faced competition from throughout her entire field, rather than her approximate age group within that field. We find that the petitioner's receipt of a "Most Promising Artist 1982" award is not an indication that she has reached the "very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. Further, as required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that her national or international acclaim has been sustained. We do not find that a youth award presented to the petitioner in 1982 demonstrates her sustained national or international acclaim as an artist. Without evidence demonstrating that the petitioner has been the recipient of a nationally or internationally recognized award in recent years, we cannot conclude that she 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.

On appeal, the petitioner states: "I would have eventually been invited to become a member of the UGAASAL, if I had continued to live and produce my work in El Salvador, as many past winners of the UGAASAL awards become members of the UGAASAL. . . . But two years after receiving the award, I left El Salvador to live with my husband in Japan."

The record includes no evidence showing that the petitioner holds membership in an association requiring outstanding achievement of its members, as judged by recognized national or international experts. Thus, the petitioner has not established that she meets this criterion.

¹ According to her Form G-325A, Biographic Information, the petitioner has resided in [REDACTED] Michigan since August 2000.

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. 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 three articles published in *La Prensa Grafica* on November 5, 1982, July 17, 1987, and November 12, 1989. The petitioner also submitted a November 9, 1982 captioned photograph from *El Diario de Hoy*. The authors of the preceding published materials were not identified as required by this criterion. The petitioner also submitted three articles published in *Artspeak* in June 1990, October 1990, and the Summer of 1991, but these articles only mention her name in passing. The plain language of this criterion, however, requires "published materials about the alien." If the petitioner is not the primary subject of the material, then it fails to demonstrate her individual acclaim. Further, the petitioner has not submitted any circulation statistics showing that any of the preceding publications had substantial national readership. Finally, we do not find that published material limited to the 1980's and early 1990's is adequate to demonstrate the petitioner's sustained national or international acclaim as an artist. Without evidence demonstrating that the petitioner has been the primary subject of major media attention in recent years, we cannot conclude that she meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted five letters of support.

[REDACTED], wife of the former [REDACTED], states:

[The petitioner] . . . was well-known to me when I resided in Japan, during our mission. Her highly expressive work, displayed in a number of mediums, was well received by art critics and art lovers alike in Tokyo and throughout Japan. She was selected to be participant in a number of exhibitions and gallery shows and was singled out for her vivid use of colors and subject matter originality.

As a citizen of El Salvador, I am especially pleased with the portrayal of her native country and its culture. She has been able to transcend boundaries to bring the beauty of the landscape and the

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.

people of El Salvador to people thousands of miles away. I have no doubt that her present work in the United States is also bringing pleasure to those who view and collect her pieces.

Member of the United States House of Representatives, whose Congressional district encompasses the [REDACTED], Michigan area where the petitioner resides, states:

My office would like to offer support to the I-140 petition submitted by [the petitioner]. We have found her to be an artist of extraordinary ability and significant talent whose expertise could and would enhance the community-at-large.

[The petitioner] is internationally known and recognized and her achievements to date have been many and notable. It is our hope that she will be able to remain in the United States and share not only the visible evidence of her artistic work, but also to spread her knowledge in this important field.

Dr. Assistant Professor, Department of Art History and Asian Languages and Cultures, University of Michigan, states:

I first encountered [the petitioner] and her paintings last year and felt as if I had stumbled upon a great hidden treasure of both [REDACTED] and the United States.

[The petitioner's] unique position, straddling Japanese and Latin American art worlds, sets her apart from almost every other contemporary artist. While she continues a long tradition of drawing inspiration from the arts of Japan, her dynamic synthesis of elements of pre-Columbian visuality engages with wider issues of identity, history, and social conscience that are fundamental to the history and present of American art. Stated simply, her works offer a truly unique view of the arts of Asia and the Americas that can be found nowhere else.

Although she has not received all of the published acclaim she deserves in the United States, [the petitioner] can surely be considered an "alien of extraordinary ability who has risen to the top of her field." She stands out as one of the great masters of a tradition of cultural synthesis that can only be imagined in the United States. There is really no one else quite like her and we would be remiss if we were to undervalue her profound contribution to the art world.

American Representative of the [REDACTED] of Taiwan, states:

I met [the petitioner] several years ago at her one woman show in New York. [The petitioner's] style and diverse subject matters left a strong impression on me. [The petitioner's] portraits were realistic and yet had a story book quality about them. I immediately commissioned [the petitioner] to do portraits for my three children which I cherish to this day.

While there are many talented painters in the world today, [the petitioner] stands out for her ability to successfully combine Eastern and Latin American artistic traditions. This mixing of the vastly different two cultural approaches creates a vibrant symbiosis that heightens our understanding about both cultures. While there have been many important artists such as [REDACTED] [sic],

[REDACTED], to name just a few, who consciously borrowed from Asian sources, [the petitioner] is recognized as the first artist to combine Asian aesthetics with pre-Columbian and Latin American approaches to painting.

* * *

Her works of last two decades provide a new view of the aesthetic relationship between the art of Asia and the New World and open new possibilities for evaluation of these contrasting cultures.

[REDACTED] Owner, [REDACTED], Japan, states:

I have known [the petitioner] in the last 15 years, because she was having her solo painting exhibitions in Tokyo every year.

* * *

I would like to write about the contribution that [the petitioner] has made in art world in Japan. She holds very unique position as a foreign artist. She has very successfully combined tradition of Latin American art with Japanese style (for example, composition and treatment of objects) and she created unique aesthetic sensibility that emerge from synthesis of dynamic Latin American culture and tranquility and impermanence of the Japanese cultural tradition which she received experience when she lived in Japan.

The letters of support submitted by the petitioner describe her as a talented artist who is admired for her style of painting, but they are not adequate to demonstrate that her original artistic contributions rise to the level of a contribution of major significance in her field. The preceding letters, which are limited to the petitioner's immediate acquaintances and a U.S. Congressman whose district includes the city in which the petitioner currently resides, cannot serve as primary evidence of the original contributions required by the criterion at 8 C.F.R. § 204.5(h)(3)(v). 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 that one would expect of an artist who has sustained national or international acclaim. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. **See section 203(b)(1)(A)(i) of the Act.** The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Thus, the regulatory criteria require specific documentation beyond mere testimony and the petitioner cannot arbitrarily replace such evidence with attestations from those writing in her behalf, who assert that they find her abilities to be extraordinary.

We find that original submissions for display or exhibition are expected of painters and do not set the petitioner apart from other artists. The record does not indicate the extent of the petitioner's influence on other painters, nor does it show that any specific works by the petitioner are particularly renowned as works of modern contemporary art. Without extensive documentation showing that the petitioner's artwork has

been unusually influential or highly acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance. Thus, the petitioner has not established that she meets this criterion.

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

The petitioner submitted evidence indicating that her paintings have been displayed at Gallery Iseyoshi (Tokyo), The Pierpont Commons at the University of Michigan (██████████ New York), ██████████ i (Tokyo), the Ariel Gallery (New York), and the Cobu Coffee Shop (Tokyo). The record, however, includes no supporting evidence establishing the reputation of the preceding venues that displayed the petitioner's artwork. We note here that display of the petitioner's artwork for purposes of sale carries significantly less weight than does museum display, strictly for the purposes of public viewing. To hold otherwise would be to qualify every artist who allows his or her work to be seen prior to purchase, thus defeating the restrictive purpose behind this criterion.

The evidence submitted by the petitioner is not adequate to show that her works have regularly been displayed at exclusive national or international venues. Nor is there any indication that her works have often been featured along side those of artists who enjoy national or international reputations. Further, the petitioner has not demonstrated her regular participation in shows or exhibitions at major venues devoted to the display of her work alone. We find no evidence showing that exhibitions in which the petitioner's works appeared have a national reputation or that participation in such exhibitions was a privilege extended only to top national or international artists.

In light of the above, the petitioner has not established that she 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.

The letter of support from ██████████ states: "My gallery sold several paintings of [the petitioner] with prices ranging approximately in U.S. dollars from \$5,000 to \$9,000 for each painting. Her artwork commanded high prices even for size of the paintings from 12 x 16 inches to 24 x 30 inches." The record, however, includes no supporting evidence (such as payment receipts, bank records, or income tax forms) showing the petitioner's actual earnings for any specific period of time. Further, the plain language of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner, however, offers no basis for comparison showing that her compensation was significantly high in relation to others in her field. There is no evidence that the petitioner earns a level of compensation placing her among the highest paid artists in the United States, Japan, or El Salvador. Thus, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The petitioner has also failed to demonstrate sustained national or international acclaim as an artist since her arrival in the United States in August 2000.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a 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.

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.