



U.S. Citizenship
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FILE: [REDACTED]
EAC 05 227 50763

Office: VERMONT SERVICE CENTER

Date: OCT 11 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

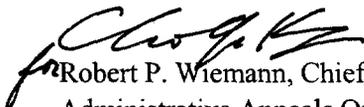
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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.


for 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 in the arts. 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 he qualifies 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 into 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, 60898-99 (Nov. 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 sustained national or international acclaim at the very top level.

This petition, filed on August 10, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a "Paper Folding Artist." 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, internationally 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. A petitioner, however, cannot establish eligibility for this

classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). 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 photocopies of the following:

1. "Certificate of Award" from the "President of the Beauty Culture" "for Outstanding Achievement in Paper Folding Artwork Exhibition in New York." (September 23, 2004)
2. "Certificate of Award" from the "Secretary of Korean Handicrafts Association" stating that the petitioner "won the Golden Prize of the 2002 Korean College Students' Handicrafts Show."
3. "Certificate Art of Award [sic]" from the "Director of Asian Artwork Association" stating that the petitioner's "artwork has won the First Prize of the 2005 Special Asian Artwork Exhibition of New York."

There is no supporting evidence showing that these awards reflect national or international recognition for excellence in the field of endeavor rather than local or organizational recognition. The record includes no information regarding the significance of these awards and the magnitude of the exhibitions and show at which they were presented. For example, there is no evidence showing the number of awards presented at these events, the criteria for granting the awards, the level of expertise of those considered, and the number of individuals eligible to compete. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of a given criterion. In this case, the petitioner has not shown that his awards command recognition beyond the presenting organizations consistent with sustained national or international acclaim in his field.

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.

The petitioner submitted his membership certificates for the Paper Folding Association of Korea and the World Association of Artists, but there is no evidence (such as membership bylaws or official admission requirements) showing that these associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's or an allied field. As such, 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 multiple photographic images of what is alleged to be his "Paper Folding Work." Without further evidence, the petitioner has not established that his artistic creations are among those shown. Further, the photographic images of the petitioner's creations were not accompanied by evidence (such as an art brochure or event program) identifying the specific exhibition or showcase in which they appeared. In this case, there is no evidence demonstrating that the petitioner's paper creations have been displayed at significant artistic venues consistent with sustained national or international acclaim.

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

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. The petitioner's appeal was filed on September 11, 2006. As of this date, more than one year later, the AAO has received nothing further.

In this case, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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 petitioner has also failed to establish that he seeks entry into the United States to continue work in his alleged area of extraordinary ability, as required by 203(b)(1)(A)(ii) of the Act. 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.