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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE: [REDACTED]
EAC 06 018 52194

Office: NEBRASKA SERVICE CENTER

Date: **NOV 28 2008**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 (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 that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner 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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) 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 September 30, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an 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.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner initially submitted the following:

1. Certificate of Award presented to the petitioner by the Global Artist League, Inc. of New York in recognition of his “Work of Excellence” (July 29, 2004).²
2. Certificate of Glory presented to the petitioner stating: “Your oil painting works, is [sic] collected by 2003 World Outstanding Chinese Artist Painting Works Exhibition, and awarded International Golden Prize. You was [sic] awarded the glory title ‘World Outstanding Chinese Artist’ for your outstanding achievement in the field of art development” (July 26, 2003).
3. “Certification of Award” presented to the petitioner stating: “Your Work to Join 3rd Beijing International Art Exposition 2000 is Awarded The Secend [sic] Prize by the Art Exposition Committee” (May 2000).³
4. Certificate of Award stating that the petitioner’s book design work received a “First Class Prize” at the 2000 Hong Kong Design Exhibition (November 2000).
5. “Golden Award Certificate” stating that the petitioner’s book design work was “awarded golden price [sic] in 8th Beijing International Book Fair” (September 2000).
6. Certificate of Award stating that the petitioner’s book design work was “awarded the 4th State Books Glory Prize” (December 1999).
7. Certificate from Jilin University stating that the petitioner received a “Second Class Scholarship of Excellent Student in the term of 1998 to 1999” (June 17, 1999).
8. Certificate from the Committee of the Jilin University Youth League stating that the petitioner received a “First Class Prize in Acquirement Competition” (April 28, 1998).
9. Certificate from Jilin University stating that the petitioner received a “First Class Scholarship of Excellent Student in the terms of 1996 to 1997” (October 20, 1997).

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

² The petitioner also submitted a document accompanying his certificate stating: “The Missions of Global Artist League (GAL) is [sic] to promote the communication of the global art, to improve the understanding the difference between US and China, and their relationship. . . . For celebrate the independent [sic] day this year, the GAL decides to unite the American Chinese Artists’ Association to organize those artists who are always activated [sic] and famous in Chinese Communities.”

³ The petitioner also submitted an announcement for the Beijing International Art Exposition 2000, but the announcement did not provide specific information regarding the award criteria or the significance of the competition.

10. Certificate from Jilin University stating that the petitioner was “[p]raised as ‘Excellent Student’” and received a “First Class Scholarship of Excellent Student” (October 20, 1997).
11. Certificate from Jilin University stating that the petitioner’s sketch received a “First Class” award in the “Sea of Art” Calligraphy and Painting Performance (September 22, 1996).
12. Certificate from Jilin University stating that the petitioner’s sketch received a “First Class” award in the “Qihong Cup” Calligraphy and Painting Exhibition (December 3, 1997).
13. Certificate of Award stating that the petitioner’s work received an “Excellent Prize” at the Japan China Arts Academy’s Eighth China Modern Oil Painting Exhibition (October 1996).
14. Certificate stating that the petitioner’s oil painting received a “First Class Prize” at the 1997 Jilin Province Art Works Exhibition (July 1997).

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS 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. Regarding items 2 through 14, the English language translations accompanying these certificates were not certified by the translator as required by the regulation.

Item 1 and items 7 – 13 reflect institutional recognition rather than national or international recognition. Further, in regard to items 7, 9, and 10, the petitioner’s receipt of university scholarships does not constitute his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner’s receipt of scholarships from Jilin University, limited by their terms to students, is not an indication that he “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). Such scholarships offer no meaningful comparison between the petitioner and those working in the field who have long since completed their educational training. With regard to item 14, we note that this prize reflects provincial recognition rather than national or international recognition.

Regarding items 1 through 14, 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 this criterion. The petitioner has not submitted evidence showing that his awards commanded national or international recognition beyond the presenting organizations consistent with sustained national or international acclaim. The record lacks supporting evidence establishing the significance and magnitude of the petitioner’s competitions. For example, the record does not include evidence demonstrating the number of award recipients, the geographic area from which the individuals eligible for consideration for these awards were drawn, the criteria for granting the awards, the level of expertise of those considered, and the number of individuals eligible to compete.

In response to the director’s request for evidence, the petitioner submitted a Certificate of Award dated January 7, 2006 stating that he was selected as one of “Top 100 Outstanding Oil Painters in Asia” in 2005. The petitioner received this award 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)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this award in this proceeding.

The petitioner's response included a September 18, 2005 Certificate of Recognition and a September 26, 2005 Certificate of Award from the U.S. Research Center for World Celebrity Culture, Inc., New York. There is no evidence showing that these awards are tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner's field.

The petitioner's response also included a certificate issued by [REDACTED] Chairman of the Committee of the World Peace Award Art Competition, University of Houston, stating: "It is hereby certified that [the petitioner] has participated in the first World Peace Award Art Competition and been Presented this Certificate of Award on the date of May 7, 2002." The certificate was accompanied by an Award Notice stating: "You are one of the award recipients for the First World Peace Award Competition! . . . We have received more than 1000 pieces works [sic] from all over the world, such as the United States, Canada, France, Italy, China, Japan, etc." The petitioner also submitted two Chinese-language articles from May 2002 reporting on the contest, but the English language translations accompanying these articles were not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). The petitioner has not established that his Certificate of Award from this competition at the University of Houston constitutes a nationally or internationally recognized prize or award for excellence in his field.

The petitioner also submitted a Best Work Award from the Committee of the 3rd International Golden Swan Art Competition, New York (1999). The award certificate was accompanied by an October 27, 1999 letter from Kathryn Freed, New York City Council Member, to Carlin Chang,⁴ Chairman of the World Art Center (located at 104-116 Nassau Street, 9th Floor, New York), stating:

It is my pleasure to congratulate the World Art Center and the China Art Center on the Third International Golden Swan Art Competition Award Ceremony to be held on October 27, 1999, at the China Art Center. The Golden Swan Art Competition . . . provides a good opportunity for Chinese artists to display their works and for the public to see and enjoy them.

This year, over ten thousand Chinese artists, from nineteen countries around the world, have participated in the competition and eleven hundred pieces of art have been selected for awards.

The petitioner has not established that his receipt of an award in a competition limited to artists of a particular ethnicity constitutes an award for excellence "in the field of endeavor." Further, we cannot ignore that "eleven hundred pieces of art" were selected for recognition in this competition. There is no evidence establishing that the petitioner's Best Work Award from this competition commanded significant recognition beyond the presenting organization. As such, we cannot conclude that the award qualifies as a nationally or internationally recognized prize or award for excellence in the petitioner's field.

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

⁴ We note that [REDACTED] chaired the Committee of the World Peace Award Art Competition held at the University of Houston.

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. Further, 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 evidence of his "Associate" membership in Oil Painters of America (OPA). The petitioner also submitted an OPA membership form stating:

ELIGIBILITY: All Artists working in the oil medium.

* * *

Associate Members must be juried in by the Board with slides or photos. Individuals then become eligible to jury for all regional shows in their area and national shows.

Signature Membership is conferred by the Board upon individuals who consistently demonstrate high quality work and have participated in three National Shows.

* * *

Master Signature Membership is conferred by the OPA Board of Director's, according to the exceptional merit of work and accomplishment in the field of art.

We cannot ignore that Signature membership and Master Signature membership are superior to the petitioner's entry-level Associate membership. There is no evidence showing that the less restrictive Associate membership status held by the petitioner in the OPA required outstanding achievements.

The petitioner submitted his membership card for the American Impressionist Society (AIS) and the Society's mission statement. According to its mission statement, AIS membership "is open to all Impressionist artists and any who would like to support Impressionism." The petitioner also submitted evidence of his membership in the Portrait Society of America, Allied Artists of America, Inc.,⁵ and the Global Artists League, Inc. of New York. The record includes general information regarding these societies, but there is no evidence showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one.

⁵ According to his membership card, the petitioner is an "Associate Member" of Allied Artists of America, Inc.

The petitioner submitted his membership certificate for the Jilin Branch of the Chinese Artists Association. The membership credential lists the petitioner's age as "26" and bears a date of January 18, 2000. The record, however, reflects that the petitioner was born on November 17, 1974. As of January 18, 2000, the date of his membership card, the petitioner was age 25 not age 26. 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. *Id.* at 591. In response to the director's request for evidence, the petitioner submitted a document entitled "The statute of China Artists' Association." The source of this document was not identified. Further, it has not been established that the information provided relates to the Jilin Branch of the Chinese Artists Association, the organization in which the petitioner claims membership.

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

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.

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 level from a local publication or from a publication printed in a language that the vast majority of the country's 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.⁶

The petitioner submitted a paperback catalogue featuring his paintings entitled [*The Petitioner's*] *Oil Painting Collections*. This publication was unaccompanied by a certified English language translation as required by the regulation 8 C.F.R. § 103.2(b)(3). Further, this publication consists primarily of artwork created by the petitioner rather than material authored by another about him. Nor is there evidence (such as number of copies sold) showing that his publication qualifies as a major trade publication or other form of major media.

The petitioner submitted January and February 2005 articles in *Ming Pao Daily News* (New York), *The China Press* (New York), *The Liberty Times* (Flushing, New York), and the "Tri-State Edition" of *Sing Tao Daily*. The English language translations accompanying these articles were not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). These articles promote an upcoming February 24th – 28th exhibition of the petitioner's work in the gallery of the Queens Art Education Center at the Flushing Shopping Center. We note that the preceding newspapers are regional in their U.S. distribution and focused on the Chinese-speaking segment of the U.S. population. There is no evidence (such as circulation statistics) showing that

⁶ 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, for instance, cannot serve to spread an individual's reputation outside of that county.

these newspapers qualify as major media. Regional coverage or coverage in a publication read by only a small ethnic segment of a country's total population is not evidence of national or international acclaim.

The petitioner submitted a brief piece (seven sentences) about his work on page 24 of the December 1999 issue of *Art and Design*. The English language translation accompanying this material was not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). Further, the author of the material was not identified as required by the plain language of this regulatory criterion. Nor is there evidence showing that this publication qualifies as a major trade publication or other form of major media.

The petitioner submitted evidence showing that his paintings were among those of numerous artists whose works appeared in *Art* (1997), *Paintings by Chinese American Artists* (2004) (an exhibition booklet edited by the Global Artist League, Inc.), *Art Panorama*, and *Design and Color* (edited by [REDACTED], the petitioner's art professor at Jilin University). These publications were unaccompanied by certified English language translations as required by the regulation 8 C.F.R. § 103.2(b)(3). The petitioner has not established that the preceding publications, or any significant portion of them, are primarily about him or his work. Further, there is no evidence showing that the publications qualify as major trade publications or other major media.

In response to the director's request for evidence, the petitioner submitted an article from the January 2005 issue of *Meishu Xiangdao (Art Guide)*. The English language translation accompanying this article was not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that this publication qualifies as a major trade publication or other form of major media.

The petitioner also submitted a brief piece (six sentences) in the "Overseas Edition" of *People's Daily* dated May 8, 2002.⁷ The English language translation accompanying this material was not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). Further, the author of the material was not identified as required by the plain language of this regulatory criterion. The petitioner submitted information regarding the circulation of *People's Daily* in China, but there is no evidence showing that its "Overseas Edition" qualifies as a form of major media.

The petitioner's response included another brief piece (nine sentences) posted on the internet at art.enorth.com.cn on May 9, 2002.⁸ The English language translation accompanying this material was not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). Further, the author of the material was not identified as required by the plain language of this regulatory criterion. Finally, there is no evidence showing that this internet site qualifies as a form of major media.

In light of the above, 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.

⁷ The petitioner's mention is limed to two sentences.

⁸ The petitioner's mention is limed to two sentences.

In response to the director's request for evidence, the petitioner submitted evidence showing that he was appointed as a member of the judging committee for the "1st International Disabled Artists Art Competition" in November 2005. The petitioner's involvement with this competition occurred subsequent to the petition's filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, there is no evidence showing the specific work judged by the petitioner, the names of those he evaluated, their level of art expertise, and documentation of his assessments.

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

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

We acknowledge the petitioner's submission of several reference letters praising his talent as an oil painter. Talent in one's field, however, is not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

Chairman of the American Chinese Artist Association, New York, states:

In looking over the works of [the petitioner], it is clear to me that he focused his entire passion on his art and nature as well. [The petitioner], who is genius, perhaps more than that of any other figure, epitomized the Chinese traditional calligraphy devices and an aggressive post expressionistic brush stroke. . . . Among his most unique works are his series of water village landscapes. One can see that the potent marks of eastern and western new expressionism were represented in this truly special series of oil paintings. Indeed, through his intense studies and brush stroke techniques for his water village scenes, he has developed a new world – New Expressionism. His creative style follows: Realism – Abstraction – Innovation – Continuous creation.

International Association of Artists with Disabilities, New York, states: "[The petitioner's] unique style of New Expressionism introduces to the viewers the phenomena that appear to be familiar, yet new in reality."

President, Global Artist League, Queens, New York, states: "I openly consider [the petitioner] as a master of rhythmical and continuous lines, forms, and colors."

President of Jilin Province Artists Association, states: "Although [the petitioner's] style resembles that of modern and post-modern expressionism, he looks at and explains the world from a totally different 'eastern' perspective."⁹

⁹ The English language translation accompanying [redacted] letter was not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3).

The evidence submitted by the petitioner does not establish that his artistic achievements constitute original contributions of major significance in oil painting. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner's artwork has earned the admiration of his educators in China, local arts organizations in New York, and the Chinese community in New York, there is nothing to demonstrate that his work has had major significance in the field at large. For example, the record does not indicate the extent of the petitioner's influence on other artists nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an artist who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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 certificates reflecting his participation in the Eighth China Modern Oil Painting Exhibition of the Japan China Arts Academy (1996), the Jilin Province Art Works Exhibition (1997), the Fourth China and Korea Art Works Exhibition (1999), the China Art Exposition (1999), the Beijing International Art Exposition (2000), and the World Outstanding Chinese Artist Painting Works Exhibition (2003). The English language translations accompanying these certificates were not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3).

The petitioner submitted a program booklet for the "2004 Chinese Elite Artist in New York Exhibition" at the Empire State Building. This booklet indicates that the petitioner was among more than fifty artists whose work appeared in the exhibition held at Fleet Bank on the first floor.

The petitioner submitted a certificate stating that he participated in a "charity bazaar for tsunami victims in South-East Asia and donated his/her art works" (January 2005). A January 2005 press release submitted by the petitioner from the Global Artist League, Inc. announces the organization's intention to hold the charity fundraiser in Times Square on Broadway between 43rd and 44th streets. The petitioner also submitted articles showing that the charity event was reported in Chinese language newspapers in New York such as *World Journal*, *Ming Pao Daily News*, and *Sing Tao Daily*. These articles were unaccompanied by certified English language translations as required by the regulation 8 C.F.R. § 103.2(b)(3).

The petitioner submitted a February 5, 2005 letter from [REDACTED], Director, Center for International Art and Culture, New York, informing him that his work was selected for presentation at the Center's "Exhibition of Works by International Artists." The petitioner also submitted a flyer announcing the exhibition. There is no information regarding the reputation of this venue.

The petitioner submitted a flyer and program booklet reflecting that he participated in a juried exhibition of the Taiwan Center Gallery in Flushing, New York in May 2005. The program booklet indicates that the petitioner was among dozens of artists whose work appeared in the exhibition. There is no evidence showing the reputation of this gallery.

The petitioner submitted a letter inviting him to hold a solo exhibition in the gallery of the Queens Art Education Center at the Flushing Shopping Center in February 2005. As discussed, the petitioner also submitted January and February 2005 articles in *Ming Pao Daily News* (New York), *The China Press* (New York), *The Liberty Times* (Flushing, New York), and the "Tri-State Edition" of *Sing Tao Daily* promoting his exhibition. The English language translations accompanying these articles were not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). Further, there is no information regarding the reputation of the Queens Art Education Center in Flushing, New York.

It must be stressed that an artist does not satisfy this criterion simply by arranging for his work to be displayed. In this case, the petitioner has not submitted evidence showing that his paintings have been displayed at significant artistic venues consistent with sustained national or international acclaim at the very top of his field. For example, there is no indication that the petitioner's works have consistently been featured along side those of artists who enjoy national or international reputations, that he has regularly participated in shows or exhibitions at significant venues devoted primarily to the display of his work alone, or that renowned art museums have displayed his work.

In light of the above, 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 request for evidence, the petitioner submitted a September 5, 2006 Certificate of Appraisal from the "U.S. Academy of Science for World Celebrity" stating that his oil painting "Water Village in Dusk" has an appraised value of \$9,300. There is no evidence showing that the painting actually sold for that amount. Further, the appraisal certificate was issued subsequent to the petition's filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The record does not include documentation (such as a Form W-2, Wage and Tax Statement, or income tax returns) showing the petitioner's actual earnings for any specific time period predating the filing of the petition. Further, the plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has commanded 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 has earned a level of compensation that places him among the highest paid artists in the United States or China.

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

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

On appeal, counsel argues that the \$9,300 appraisal of the petitioner's oil painting "Water Village in Dusk" meets this regulatory criterion. This evidence has already been addressed under the preceding criterion at 8 C.F.R. §§ 204.5(h)(3)(ix). The plain language of this regulatory criterion indicates that it applies to the performing arts (such as singing and acting) rather than oil painting. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Nevertheless, the September 5, 2006 appraisal certificate was issued subsequent to the petition's filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Further, this regulatory criterion calls for evidence of commercial successes in the form of "receipts" or "sales." An appraisal for a single unsold painting is not evidence of commercial successes in the petitioner's field. The record does not include evidence of "sales" or "receipts" showing that the petitioner has achieved commercial successes as an artist in a manner consistent with sustained national or international acclaim at the very top of his field.

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

In this case, we concur with the director's finding that 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).

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 petitioner submitted a September 8, 2005 letter stating: "I write to confirm my intention to continue working in the United State [sic] in the field of Art, as described more fully in the petition addressed to you on my behalf." This single sentence in the petitioner's letter does not sufficiently detail his plans to continue working in the United States. Further, we note that Part 6 of the Form I-140 petition, "Basic information about the proposed employment," was left blank. As such, the petitioner has not submitted "clear evidence" establishing that he will continue to work in his area of expertise in the United States.

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 a national or international level. Nor is there clear evidence showing that the petitioner will continue to work in his area of expertise in the United States. 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.