U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 01 184 50157 Office: VERMONT SERVICE CENTER Date: OCT 27 2004

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 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.

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.

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 seeks to classify the petitioner as an alien with extraordinary ability as a pencil artist. In order to better evaluate the evidence, however, it is necessary to describe the petitioner's work in more detail at the outset. The petitioner's work consists of city landscapes drawn as large as fifteen feet by twenty feet and including accurate depictions of thousands of buildings that take years and thousands of pencils to complete.

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 that, he claims, meets the following criteria.

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 submitted evidence that he was a member of the Arts Council of Greater New Haven. The petitioner did not submit the membership requirements for this council. The letter references a $30 membership fee. Membership in a local council that requires only payment of fees for membership cannot serve to meet this criterion, which requires membership in an exclusive association where national or international experts judge prospective members.

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.

The petitioner submitted articles about him and his work published in *The Hartford Courant*, the *New Haven Register*, the *Connecticut Post*, *The Herald* (which serves several towns in Connecticut), *The Bristol Press*, and "The City" section of *The New York Times*. An interview with the petitioner was also published in the commercially available book, *Positively Connecticut*, which includes 70 of the 400 interviews conducted by Channel 8 reporter [redacted]. *The Herald* article indicates that a viewer of his work in New Britain saw a story featuring the petitioner on ABC's "20-20." The record does not contain confirmation from ABC that the petitioner was featured on this show.

The director concluded that the articles "simply described the [petitioner's] work." The director does not explain how this characterization precludes the articles from being about the petitioner and relating to his work, which is all the regulation requires. Obviously, we must look at the content of the articles. The articles in this case, however, are all positive.

Clearly, the *New York Times* is major media and the full article in that publication is the result of independent journalistic coverage, and not merely a promotional press release or paid advertisement. Nevertheless, the petitioner has not demonstrated that "The City" section is nationally circulated. More persuasive evidence would have included evidence that publications outside New York and Connecticut published articles about the petitioner and by submitting stronger evidence that he was featured on ABC's "20-20." Ultimately, the petitioner has not demonstrated 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.

In support of this criterion, the petitioner submitted a letter from [redacted] expressing appreciation for the autographed copy of the petitioner's work. It appears from the letter that the copy was sent to [redacted] unsolicited. In another letter, [redacted] of the U.S. Postal Service in New Haven, Connecticut, asserts that during a March 30, 2001 commemoration of a Yale University Stamped Card issued by the Postal Service, the petitioner presented a drawing of the United Nations Building to U.N. Ambassador Joseph Verner.

The petitioner submitted a 1997 letter from [redacted] of the Marketing Department for Staedtler, Inc., a manufacturer of pencils and other artistic tools. She indicates that she had been trying to contact the petitioner by phone and was interested in whether the petitioner did use Staedtler pencils in his work as it appears from a photograph, and, if so, whether the company could obtain prints for display in their office and at trade shows.

Other information in the record reveals that Staedtler uses the petitioner and his work in its print advertisements with the theme "See what can be done with just a pencil."

In addition, Tomoko Tanaka, of Uniphoto Press International, requested permission to use the petitioner's artwork "for one time publication use in a Japanese magazine." Finally, according to the article in *The Bristol Press*, the petitioner's work, "The Super Big Apple," is "the largest graphite pencil drawing ever created by a single artist." The record does not include confirmation of this assertion from any artistic authority.

In addressing this criterion, the director acknowledged that the petitioner submitted three letters but concluded that the letters submitted were not from art experts.

On appeal, the petitioner submitted a new letter from Staedtler, this one from [redacted] asserts that Staedtler has a framed print of the petitioner's work in its main conference room and has displayed the petitioner's work at tradeshows and in their print advertisements in a national fine art magazine. [redacted] concludes that the petitioner's work "inspires others to find creative ways for expression. School children have been motivated by your achievements in the field of art/drafting." [redacted] does not explain how he, as President of an art pencil manufacturer, has knowledge of the petitioner's influence on other artists and school children.

Letters confirming that the petitioner has made unsolicited presentations of his work to a businessman and a diplomat is not persuasive of his influence in the field of art. While the Staedtler promotions have the potential to increase the petitioner's visibility in the field, they do not suggest that he has already influenced that field. The record contains no evidence that art instructors and textbooks nationwide focus on the petitioner as an influential force in the field. Finally, the petitioner submits no authoritative source for the assertion that his drawings are the largest pencil drawings by a single artist. Moreover, even if we accepted that they were, it is not clear that this accomplishment would represent a contribution of *major significance* to the field.

Finally, on appeal, the petitioner submits evidence that in 2002, the Harvard Project on the City – Lagos, Harvard Design School, purchased the rights to use the petitioner's cityscape of Lagos in their forthcoming book on Lagos architecture planned for publication in 2003. This evidence relates to accomplishments after the date of filing and cannot be considered. Regardless, while this cityscape may be useful in a study of Lagos architecture from a design perspective, the offer to include the petitioner's work in this book does not reflect that his work has had an influence on the field of art.

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

The petitioner submitted evidence that he displayed his work at two local high schools and a public library in Connecticut and New Haven City Hall. The newspaper story regarding the unveiling ceremony at New Haven City Hall indicates that the petitioner's work was on display there for a month. In addition, the article in *The Herald* indicates that the petitioner's work was on display at the New Britain Public Library in Connecticut. The article in the *Connecticut Post* indicates that the petitioner's work would be displayed in New Haven's Union Street train station in the fall of 1999. Finally, the October 26, 1997 article in the *New York Times* indicates that one of the petitioner's works would be on display at the Skyscraper Museum through December. The paper quotes the director of the museum as stating: "Those untutored in architecture are astounded by the level of detail. People who do know architecture appreciate its sophistication."

The petitioner also submitted several photographs revealing that his work is sold at several gift shops in New York, including in the official shops at the United Nations Building and the Empire State Building. This information is confirmed in the article in the *Connecticut Post.*

The director concluded that the petitioner had only demonstrated displays at two high schools, two local libraries, and New Haven City Hall. The director did not state why these displays were insufficient, although, had those been the only displays, we might concur with such a conclusion. The evidence submitted to meet any of the criteria must be indicative of or at least consistent with national acclaim. We find that the displays at the Skyscraper Museum and New Haven Union Street train station are beyond the normal gallery display inherent in the field of visual art. Moreover, it is arguable that the "display" of the petitioner's work on the Japanese magazine cover and in the Staedtler advertisements, which fully credit the petitioner and briefly discuss his work in major art journals, is comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h). Further, while the petitioner's work has been sold only in New York stores, we cannot completely ignore that they are sold at three of the most likely spots in New York to attract national and international tourists, the Statue of Liberty, the Empire State Building, and the United Nations Building. That said, evidence of display at exclusive exhibits outside the New York/Connecticut area would be far more persuasive. Ultimately, even considering the positive factors above, we cannot conclude that the evidence is indicative of or consistent with national acclaim.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner claims for the first time on appeal to meet this criterion. He submits letters attesting to his charitable donations and appearances at high schools and a public library. This documentation does not establish that the petitioner was hired to fill a leading or critical position with an organization or establishment with a distinguished national reputation.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted an invoice reflecting that Evelyn Hill, Inc. on Liberty Island paid the petitioner $915 on August 12, 2001. The director did not consider this evidence, although we note that it does not compare the petitioner's income with the most acclaimed artists in the country. On appeal, the petitioner submits evidence of payments made to him in 2002. He does not submit his income tax returns or evidence of how his annual income compares with the most acclaimed artists in the United States. Thus, 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.

The petitioner addresses this criterion for the first time on appeal. [redacted] Vice President of the Intrepid Museum in New York asserts that the petitioner's products are "among our better selling items in our Museum Store." Jose Sepulveda, buyer for Evelyn Hill Corporation asserts that the petitioner's drawing of New York City has been sold and displayed at the Statue of Liberty Gift Center, with 2,800 pieces sold during that time. The petitioner also submitted photographs of gift shops in the Empire State Building, the United Nations Building and small shops around New York City that sell postcards and prints of the petitioner's work. We cannot, however, evaluate this evidence without any evidence comparing these sales to the sales of works of art by the most acclaimed artists in the United States.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an artist 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 indicates that the petitioner shows undeniable talent as an artist, but is not persuasive that the petitioner's acclaim had spread nationwide at the time of filing. 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.