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FILE: [REDACTED]
WAC 04 012 52270

Office: CALIFORNIA SERVICE CENTER Date: DEC 02 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, the petitioner submits a brief and additional supporting documents. We uphold the director's decision for the reasons discussed below.

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 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).

In this case, the petitioner seeks classification as an alien with extraordinary ability as a fine artist. With her petition and in response to the director's Request for Evidence (RFE), the petitioner submitted supporting documents including evidence of her academic credentials; the publication of her work in one book, catalogues and art periodicals; the display of her work at exhibitions and art fairs; and numerous newspaper articles that mention, discuss or contain photographs of her work. On appeal, the petitioner submits a brief and 14 support letters from friends, colleagues and customers. The petitioner also submits printouts of two electronic mail messages on appeal that we cannot consider because they discuss events that arose after the petition was filed.

The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner's claims and the remaining evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed. We address the record and the petitioner's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under 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 claims to meet this criterion by virtue of her third-place award in a South African children's book illustration competition. The record contains a letter addressed to the petitioner and written in Afrikaans. The letter was submitted with an uncertified English translation. Any document in a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English translation that the translator has certified as complete and accurate and the translator's attestation 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 certified translations of the document, we cannot determine whether the evidence supports the petitioner's claim. *Id.* We note, however, that the letter is dated 1986, seventeen years before this petition was filed. Hence, the award does not demonstrate the requisite sustained acclaim.

The petitioner also claims to satisfy this criterion because she was granted a stipend to represent South Africa at international art shows. The record contains a letter from [REDACTED] Trade Advisor for Export Marketing Investment Assistance, Trade and Investment South Africa. The letter is dated April 15, 2002, addressed to Hettie Saaiman Graphic Art and states, "Trade and Investment South Africa (TISA) has financially assists [sic] the above mentioned company with Individual Exhibitions Internationally [sic] since 1995 till [sic] date. The company has exhibited in the following countries: United Kingdom, France, Netherlands, USA, Singapore and Dubai." Prior counsel stated that "[n]o other artist from South Africa was chosen for this type of award." Yet the record contains no evidence to corroborate this statement or the assertion that the petitioner's TISA financial assistance is a nationally or internationally recognized award. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the petitioner also states that South African President Thabo Mbeki acquired one of her paintings for his personal collection. The record contains a photograph of President Mbeki and the "Major of Ballito" holding a painting, but no corroborative evidence that the pictured painting is the petitioner's. Even if fully documented, the acquisition of an artist's work by a famous politician is not a nationally or internationally recognized prize or award for artistic excellence. Moreover, the petitioner submitted a copy of her daughter's high school report about her, which states that the petitioner's former husband "ran in election for the major of Ballito." This statement and the photograph suggest that the painting was presented to President Mbeki as a gift, rather than personally selected by him.

The record contains no evidence that the petitioner has won nationally or internationally recognized prizes or awards for artistic excellence in a manner consistent with the requisite sustained acclaim. Accordingly, 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.*

Although she does not explicitly claim eligibility under this criterion, the petitioner submitted a letter on appeal that refers to her membership in one artistic association. Janet Spretter states that the petitioner belongs to the "Four Seasons Artists of Maui Program" and that the petitioner "is one of the original members of the program that currently consists of a very select group of about fifty artists." The record contains no corroborative evidence of this program, its membership criteria or other documentation that outstanding achievements are prerequisite to membership in the program. In addition, Ms. Spretter indicates that the program is regional and does not state that the program is recognized in the visual arts field outside of Maui. The record contains no evidence of the petitioner's involvement with any other artistic associations, membership in which would reflect sustained national or international acclaim. 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 numerous newspaper articles that mention the petitioner, discuss her work or contain photographs of her paintings. These articles were published between 1983 and 1999 in the following South African newspapers: *The Sunday Tribune*, *North Coast Courier*, *South Coast Fever*, *South Coast Herald*, *Pretoria News*, and *Coastal Courier*. On appeal, the petitioner claims that "[t]he newspaper are [sic] considered daily and in the top three newspapers sold in South Africa. See Exhibit A enclosed." The materials submitted on appeal do not include the referenced "Exhibit A" or any other evidence that the submitted articles were printed in major South African media with national circulation, publication in which would reflect national acclaim. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

As further evidence of her eligibility under this criterion, the petitioner submitted excerpts from the catalogues of fine art printing and publishing companies that have purchased the copyrights to some of the petitioner's work. Promotional commercial publications such as these catalogues do not meet this criterion because they are selling or advertising an artist's work, for which the artist has or will be compensated. Commercial catalogues are thus part of a company's work product and are not equivalent to professional, major trade publications or other major media. The petitioner herself states that her work is featured in these catalogues because she has sold the copyrights and receives royalties for reproductions of her work sold by the companies.

Apart from the catalogues, the petitioner submits excerpts from two editions of *Art Expressions*. The Autumn-Winter 2000 edition of this magazine includes a one-paragraph entry about the petitioner and a small reproduction of one of her paintings. This brief mention of the petitioner's work does not reflect sustained acclaim. The back cover of the Winter-Spring 2003 edition of *Art Expressions* includes small reproductions of two of the petitioner's paintings in a collage of images for what appears to be an advertisement for Eurographics. Advertisements featuring an alien and his or her work are not published materials about the alien, because the inclusion of the alien's work is the result of a commercial agreement and not independent media coverage reflective of national or international acclaim.

A one-sentence mention of the petitioner and a picture of one of her paintings was published in 1998 in *Picture Business* as part of an article previewing the "Image 98" world trade show in Las Vegas. The petitioner states that *Picture Business* is a monthly magazine for art and framing, but the record contains no corroborative evidence that *Picture Business* is a professional or major trade publication in the petitioner's field. The petitioner further states that there have been "several articles" about her work published by this magazine, but the record contains evidence of just one article that mentions the petitioner. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

The record includes excerpts from a book entitled "The Collector's Guide to Art and Artists in South Africa[:] A Visual Journey Into the Thoughts, Emotions and Minds of 558 Artists." This book includes a short entry for the petitioner and was published in 1998. The petitioner's inclusion in this compendium of over 500 artists published five years prior to the filing of this petition does not demonstrate sustained national acclaim.

The petitioner also submitted articles that mention or discuss her work, which were published in the following Hawaiian newspapers: *Lahaina News*, *Maui News*, and *Gold Coast*. The record contains no evidence that any of these newspapers are nationally circulated or are otherwise considered major media, publication in which might reflect national acclaim.

In review, the petitioner submitted numerous printed documents that mention, discuss and reproduce the petitioner's work. However, the record contains no evidence that these pieces have been printed in professional, major trade publications or other major media in a manner consistent with the requisite sustained acclaim. The director only briefly addressed the newspaper articles and found that they met this criterion. However, when fully assessed, the relevant evidence does not establish that the petitioner meets this criterion.

(iv) 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.

On appeal, the petitioner claims to meet this criterion because she "submitted evidence that she judged art works at competitions in Maui, and when she was a teacher in South Africa. She has spoken at art festivals in the United States, appraising and evaluating the works of other artists." The record does not support this claim.

The evidence submitted shows that the petitioner has taught art courses in South Africa and the United States, but does not establish that she judged art competitions or evaluated the work of other artists at festivals in either country. A short announcement published in the *Maui News* in 2002 reports that the petitioner will give an ink-painting workshop at the "Art School in Kapalua." The petitioner states that she has offered numerous workshops at this school since 2002, but the record only documents this one ink-painting workshop. Two newspaper articles confirm that the petitioner also taught art classes in South Africa. An article published in the August 12, 1983 edition of the *Coastal Courier* states that the petitioner "finds time to give art classes to those wishing to further persue [sic] their talents." Another article published in the April 9, 1999 edition of the *South Coast Herald* states that the petitioner's "career has included lecturing in illustration, photography and figure drawing at ML Sultan Technikon and packaging and figure drawing at Natal Technikon." The record contains no further evidence regarding the petitioner's teaching and no documentation that she judged art competitions or evaluated other artists' work at festivals in South Africa or the United States. The petitioner's mere assertion of her judging experience is insufficient. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

While the petitioner's teaching inevitably involved judgment of her students' work, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. The petitioner submitted no evidence that she judged of the work of other visual artists in a manner significantly outside the general duties of her teaching positions and reflective of sustained national or international acclaim. Accordingly, she 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.

On appeal, the petitioner claims to meet this criterion because she has "been recognized by the best Art Critic magazines in the world . . . [and] by Affiches Catalogues from Italy[;]" because she "has been granted a one-man show in South Africa, United Kingdom, Seychelles and Holland[;]" and because reproductions of her artwork have been purchased to "create calendars in France, Italy, South Africa and New Zealand" as well as "stationary, posters, prints, pottery, boxes, stickers, notebooks, letter sets, pencil cases and photograph albums." The record does not support this claim.

The petitioner submitted excerpts from publishing and printing catalogues that feature her work. As discussed above under the third criterion, these commercial catalogues are in-house publications by companies that have purchased the copyrights to the petitioner's featured work. The petitioner submitted no corroborative evidence that Affiches Catalogues, the Breakthrough Catalogue or Collingwood Art Reproductions are critical art periodicals rather than commercial trade publications. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Moreover, the petitioner submitted no evidence that her work, as featured in these catalogues, significantly influenced other visual artists or otherwise had a major impact on her field.

The record contains short mentions of the petitioner's work in *Art Expressions* and *Picture Business*, but as discussed under the third criterion, these references to the petitioner are not substantive, critical reviews of her work and they do not establish that the petitioner has made original contributions of major significance to her field. The petitioner has also not submitted any evidence regarding the editorial criteria and circulation of either of these magazines.

As is further discussed under the seventh criterion, the record shows that the petitioner has exhibited her work in South Africa, the United States and the United Kingdom. Although the petitioner claims she has also shown her work in Seychelles and Holland, the record contains no corroborative evidence of such exhibitions. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Some of the submitted newspaper articles favorably mention or review the petitioner's exhibitions, but the record contains no evidence that these articles were published in nationally circulated newspapers or otherwise demonstrate significant recognition in her field in a manner reflective of sustained national or international acclaim.

The record also contains copies of greeting cards, gift wrap tags, and calendars that the petitioner claims feature her work, but the copies themselves are attributed to Creative Stationary, Intercontinental Greetings, Ltd., and Calah Paper, not the petitioner. Even if the record documented that the petitioner designed these products, the

record contains no evidence that any of the products were critically acclaimed, significantly influenced other graphic artists, or otherwise made a substantial impact on the petitioner's field.

Finally, the support letters submitted on appeal praise the petitioner's work, her character, and her contributions to the visual arts community in Maui. Yet these letters do not identify any major contributions that the petitioner has made to her field.

The relevant evidence indicates that the petitioner has received limited recognition for her work in regional newspapers and two art periodicals, that her work has been reproduced in art publishing and printing catalogues, and that she has exhibited her work in South Africa, the United Kingdom and the United States. Yet the record contains no evidence that the petitioner's work has been critically acclaimed in substantive reviews published in major art periodicals, that her work has significantly influenced other artists, or that she has otherwise been recognized as making original and major contributions to her field in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

Frequent display of artwork is intrinsic to most professions in the visual arts. However, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. In this case, the record documents the petitioner's exhibition of her work in South Africa, the United Kingdom and the United States. As discussed under the third and fifth criteria, the record contains no evidence that the petitioner's work has been critically acclaimed in substantive articles published in major art periodicals or other major media. The petitioner submits evidence that she has displayed her work in competitive exhibitions and art fairs, but the record does not persuasively establish that these events were nationally or internationally recognized as premier exhibitions in the petitioner's field or that the petitioner's work was otherwise displayed in a manner consistent with sustained national or international acclaim. The petitioner also submitted photographs of the display of her work at a hotel and a shopping mall in Maui that show the petitioner with her work set out on a table in what appears to be the hotel lobby and the shopping mall food court. Such venues do not demonstrate the requisite acclaim. In review, the relevant evidence does not establish that the petitioner has displayed her work at artistic exhibitions or showcases in a manner consistent with the requisite sustained acclaim. Accordingly, she does not meet this criterion.

(ix) 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 initially claimed that she met this criterion because she earns an annual income of \$80,000 and is represented by a licensing company in New York City. However, the record contains no comparable evidence that the petitioner's salary or remuneration is significantly higher than other visual artists in the United States or South Africa or comparable to such artists at the very top of their field. Accordingly, the petitioner does not meet 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 a successful visual artist. However, the record does not establish that the

petitioner has achieved sustained national or international acclaim placing her at the very top of her field. She 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 her 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.