

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

B2

FILE: [REDACTED]
SRC 05 010 50983

Office: TEXAS SERVICE CENTER Date: **SEP 28 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.

Mari Johnson

g Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

This petition, filed on October 14, 2004, seeks to classify the petitioner as an alien with extraordinary ability as an embroidery artisan. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since February 1998. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as an embroidery artisan in this country.

In support of the petition, the petitioner submitted eight photographs of what are alleged to be her embroidery creations. This evidence, however, was not sufficient to demonstrate the petitioner's sustained national or international acclaim, or that her achievements have been recognized in her field of expertise. On

November 3, 2004, the director denied the petition, finding that the petitioner's evidence did not satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3).

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. On appeal, the petitioner has submitted evidence pertaining to the following criteria.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submits a photocopy of the cover of a book entitled *Jiangsu Embroidery* of which she claims she is the author. While several names are listed in English on the cover of this book, the petitioner's name is not one of them. Nor has she provided a translation of the book cover, indicating that her name is among the authors. The petitioner has not resolved this discrepancy. 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.

The record contains no evidence showing the part of this book that the petitioner authored or quantitative evidence of the book's significant national or international readership. Nor is there supporting evidence indicating that the petitioner's published material (if any exists) is viewed throughout her field as significantly influential.

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

The petitioner re-submits what is alleged to be a photograph of herself at a "personal artwork exhibition" in 1990. While we cannot state with certainty that the individual in this photograph is not the petitioner, we note that a recent photograph of the petitioner attached to her Form I-485, Application to Register Permanent Residence of Adjust Status, bears little resemblance to the woman in the photograph from 1990.

In regard to the 1990 photograph, the petitioner states: "I attended many art and culture crafts [sic] shows and exhibitions; this photo is I was [sic] showing audience how I created my artwork, this was personal artwork exhibition of the year 1990." An assertion accompanying a photograph is of limited probative value. The record lacks substantive evidence to support the petitioner's claim. For example, the petitioner has not submitted contemporaneous documentation from the events (such as pamphlets or brochures) to support the assertion that she "attended many art and culture crafts [sic] shows." Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). In this case, there is no evidence identifying the names and exact dates of the "many" shows and exhibitions in which the petitioner claims to have participated.

We cannot ignore that section 203(b)(1)(A)(i) of the Act requires “extensive documentation” of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide ample evidence showing that the exhibitions in which she participated were only open to top national or international embroidery artisans. It must be stressed that an artisan does not satisfy this criterion simply by arranging for his or her work to be displayed or sold. In this case, the petitioner has not shown that her exhibitions enjoy a national reputation, or that she has regularly participated in exclusive shows devoted solely or largely to the display of her work alone.

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 re-submits what are alleged to be photographs of two of her embroidery creations. On appeal, the petitioner added captions to these photographs. The first captioned photograph states: “This one was sold at \$3,000.”

The second captioned photograph states: “This one was sold at \$4,500.”

The record contains no evidence to support the petitioner’s assertions regarding the price at which she sold her embroidery creations. As noted previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici* at 158, 165. There is no evidence showing that the petitioner’s compensation is significantly higher than that of other embroidery artisans.

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

The petitioner claims that the two captioned photographs discussed under the preceding criterion are evidence of her “commercial successes.” The plain wording of this criterion, however, indicates that it is intended for “performing” artists such as musicians and actresses rather than the petitioner’s occupation. Nevertheless, the regulation calls for commercial success in the form of “sales” or “receipts”; simply asserting that one’s work has been purchased cannot satisfy criterion. The record contains no evidence of documented “sales” or “receipts” showing significant national distribution of the petitioner’s embroidery products or their widespread commercial success.

In this case, the petitioner has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at 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 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 contains no such evidence.

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.