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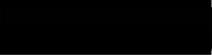
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DEC 15 2006

FILE:



Office: VERMONT SERVICE CENTER

Date:

EAC 05 068 50097

IN RE:

Petitioner:

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:

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, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. 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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 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 earned sustained national or international acclaim at the very top level.

This petition, filed on December 29, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a painter and teacher.

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 pertaining to the following criteria.

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

The petitioner submitted the following:

1. Certificate stating that the petitioner's artwork "won the Silver Prize at the Authentic Chinese Painting Exhibition" at the Chinese Folk Arts Museum (October 2, 1999)
2. Certificate stating that the petitioner's artwork "Old Country" won the Best Prize at the Kaifeng Folk Artworks Exhibition (November 1990)
3. Certificate stating that the petitioner's artwork was selected for inclusion in the "First National Flower and Bird Brushwork Exhibition" and was awarded "the Outstanding Prize" (March 5, 1992)
4. Certificate stating that the petitioner's artwork "won the Second Prize at the Hop Cup of Northwest, Center North, Northeast Painting, Calligraphy, and Seal Carving Competition" (August 1993)
5. Certificate stating that the petitioner's artwork "Childhood" was awarded "the Silver Prize at the National Chinese Painting Exhibition of New Age" (October 1999)
6. "Certificate of Honor" stating that the petitioner's artwork "The Fun of Country Life" won the Silver Award at the "Fifth Anniversary of Chinese Artists' Work Exhibition" (October 30, 2003)
7. Certificate stating that the petitioner's artwork "My Hometown" won the Golden Award at the "Anniversary of Chinese National Day – Artwork Exhibition of Shanxi Province" (September 1990)
8. "Certificate of Honor" stating that the petitioner's artwork "Fall" won second place at the Exhibition of Chinese National Day Celebration (October 7, 1994)
9. "Certificate of Honor" stating that the petitioner won second prize at the "Forty Fifth Anniversary of Chinese National Day – Painting, Calligraphy and Photography Contest" (January 1998)

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS 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. The translations accompanying the petitioner's award certificates were not certified as required by the regulation.

In regard to item 9 above, we note that the People's Republic of China was founded on October 1, 1949 and that Chinese National Day is celebrated on October 1st of each year.¹ Therefore, the "Forty Fifth Anniversary of Chinese National Day" occurred on October 1, 1994, not in January 1998. The petitioner has not resolved this discrepancy regarding his award certificate. 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.

In this case, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. Further, the record includes no

¹ See http://english.people.com.cn/data/China_in_brief/Fast_facts/Fast%20Facts.html, accessed on December 14, 2006.

evidence that would demonstrate the number of recipients, the criteria for granting the awards, the level of expertise of those considered, and the number of individuals eligible to compete. We note here 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 adequate evidence showing that the awards presented under this criterion enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or print media to establish that the preceding awards are nationally or internationally recognized.

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

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, 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 what is alleged to be his "Certificate of Appointment" (issued in June 1995) for the Chinese Fine Arts Association. There is no evidence showing the duration of petitioner's membership or whether he remained active in this association in recent years. In response to the director's October 24, 2005 notice of intent to deny, the petitioner submitted documents entitled "The Chinese Artist Association Introduction" and "Chinese Artist Association Regulation." We cannot accept these documents as evidence, however, because the English language translations accompanying them were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the source of these documents has not been properly identified, nor is there evidence demonstrating that the Chinese Fine Arts Association and the Chinese Artist Association are one in the same. In this case, there is no evidence showing that admission to membership in the Chinese Fine Arts Association required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

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.

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 or international level from a local publication or from a publication in a language that most of the 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.²

The petitioner submitted what is alleged to be an essay about him published in the February 1997 issue of *Chinese Arts*. The English language translation accompanying this essay was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nor has the petitioner submitted circulation statistics or other evidence showing that this publication qualifies as major media. Further, as required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record, however, includes no evidence showing that the petitioner has been the subject of published material subsequent to 1997.

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

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

The petitioner submitted images of what are alleged to be his artistic creations. Without further evidence, it has not established that the petitioner's works are among those shown. The images of the petitioner's creations were not accompanied by contemporaneous evidence (such as an event program or art brochure) indicating the specific exhibition or showcase in which they appeared. In this case, there is no evidence demonstrating that the petitioner's works have been displayed at significant national or international venues. Nor is there any indication that the petitioner's works have been featured along side those of artists who have national or international reputations. Further, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his artwork alone.

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

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted an identification certificate identifying him as "Chief Editor" of the *Calligrapher and Painters' Journal* from May 1995 to May 1997, but there is no evidence showing that this publication has earned a distinguished national or international reputation. This single credential is not adequate to demonstrate that the petitioner has performed in a leading or critical role for a distinguished organization, or

² 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, cannot serve to spread an individual's reputation outside of that county.

that his involvement has earned him sustained national or international acclaim. Thus, 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.

The petitioner submitted an “ISC2000 Certificate” issued by the “Department of Art Products Cultural Market Development Center” of the Chinese Cultural Ministry authorizing the petitioner “to promote, introduce, sell, and export through domestic and international cultural markets.” The record, however, includes no official financial documentation (such as payroll records or income tax forms) showing the petitioner’s actual earnings for any given period of time. The plain wording of this criterion requires the petitioner to submit evidence of high remuneration “in relation to others in the field.” In this case, there is no evidence showing that the petitioner has earned a level of compensation significantly higher than that of others in his field. Nor is there any indication that the petitioner earns a level of compensation that places him among the highest paid artists in the United States or China. Thus, the petitioner has not established that he meets this criterion.

In conclusion, we find that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” The record includes no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.