



U.S. Citizenship
and Immigration
Services

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FILE:

NEBRASKA SERVICE CENTER

Date: JAN 10 2008

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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, 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 athletics. 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. The director also determined the petitioner had not submitted evidence that she would continue work in her area of expertise in the United States.

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.

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, 60898-99 (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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on October 16, 2006, 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.

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 a Certificate of Award from the Chinese Jade Carving Artist Association and a prize certificate for excellent jade carving from the Chinese Jade Carving Art Meeting of 2000. 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 English language translations accompanying the petitioner’s certificates were not certified as required by the regulation.

In response to the director’s notice of intent to deny, the petitioner submitted a “Reward Certification” from the World Culture Alliance of Flushing, New York stating that she earned a “Lifelong Award for Outstanding Achievements in Jade Carving Art.” This award reflects institutional recognition rather than national or international recognition.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* and it is her burden to establish every element of a given criterion. In this case, the petitioner has not shown that the preceding awards command significant recognition beyond the presenting organizations consistent with sustained national or international acclaim. For example, there is no evidence such as national press coverage surrounding the petitioner’s awards or other evidence showing that they have a substantial level of recognition.

In light of the above, the petitioner has not established that she 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.

The petitioner submitted what is alleged to be a copy of her membership card for the Chinese Jade Carving Artist Association. The membership card lists the petitioner’s age as “32” and an issue date of March 5, 1982. The petitioner, however, was born on December 19, 1950. As of March 5, 1982, the issue date of this membership card, the petitioner would have been age 31 not age 32. 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 notice of intent to deny, the petitioner submitted a "Certificate of Membership" from the World Culture Alliance of Flushing, New York stating that she is a member of "the World Association of Civil Artists." The petitioner also submitted a Chinese language document entitled "Tenet of the World Cultural Alliance," but the English language translation accompanying this document was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The record includes no evidence showing that the preceding associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's or an allied field. As such, the petitioner has not established that she meets this criterion.

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

The petitioner submitted what is alleged to be an article she authored entitled "A Simple Introduction of Jade Carving." The English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that this article was published in a professional or major trade publication or other form of major media. Finally, the plain language of this regulatory criterion requires "authorship of scholarly articles." A single article authored by the petitioner does not meet this requirement and is not indicative of sustained national or international acclaim.

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

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

The petitioner submitted what are alleged to be photographic images of her artwork on display. These images were unaccompanied by evidence (such as an art brochure or event program) identifying the specific artistic exhibition or showcase in which the petitioner's artwork appeared. In this case, there is no evidence demonstrating that the petitioner's creations have been displayed at significant artistic venues consistent with sustained national or international acclaim. As such, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Beyond the regulatory criteria, the petitioner submitted letters of support allegedly issued by [REDACTED] of the American Chinese Professionals Association and [REDACTED] of the World Culture Alliance. The record, however, includes no evidence showing that either of these individuals is a jade carving expert. Further, the letter from [REDACTED] does not include an address, telephone number, or any other information through which she may be contacted. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's

eligibility for the benefit sought. *Id.* The submission of letters of recommendation is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. With regard to the recommendation letters from [REDACTED] and [REDACTED] neither of their letters offers any substantive discussion of specific achievements that demonstrate the petitioner has sustained national or international acclaim within the small percentage at the very top of her field.

As stated previously, the director also determined the petitioner had not submitted evidence that she would continue work in her area of expertise in the United States. 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.

In light of the above, 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.