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U.S. Citizenship
and Immigration
Services

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FILE:

LIN 06 217 50161

Office: NEBRASKA SERVICE CENTER

Date: MAR 03 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition 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 the arts. The director determined the petitioner had not established that she sought to enter the United States for the purpose of continuing in her area of expertise. The director further 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 has 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 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 photographer and painter. The regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by 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 petitioner indicated on the Form I-140, Immigrant Petition for Alien Worker, that her proposed employment was as a photographer. In her June 29, 2006 letter accompanying the petition, the petitioner claimed extraordinary ability in photography and painting. She further stated that was applying for entry into the United States “in order to showcase my work in the USA and establish a new branch of my photography school in New York City.”

In his March 27, 2007 request for evidence (RFE), the director advised the petitioner:

While part five of the petition indicates you are a renowned photographer, the record also contains evidence regarding your accomplishments as a painter. Please note that photography and painting are separate fields of endeavor. Therefore, you must clarify the field of endeavor in which you are claiming extraordinary ability.

In response, the petitioner demurred to the request to choose between her two areas of expertise, stating:

I appreciate [the director’s] opinion . . . as to the fact that painting and photography isn’t the same field, but I disagree when I am asked to choose between them. Painting and photography are the same passion, and I achieved great acclaim in both – as my original file proves. Yet, if I must concentrate in one field (for bureaucratic reasons) I would go with painting since my recent major contracts and awards are based on my paintings.

The petitioner submitted a copy of an April 17, 2007 letter from [REDACTED], confirming that the petitioner was hired as the set designer and painter for a Broadway production of [REDACTED] which was scheduled to premiere in early 2008.

In denying the petition, the director noted the petitioner’s role in the Broadway production but determined:

However, the evidence provided does not clearly establish that the petitioner will in fact continue work as a painter. The petitioner provided no clear plans on how she will continue work in the field as a painter let alone as a photographer. Rather,

it appears that the petitioner will perform a multitude of general services in the overall field of arts. In the absence of additional evidence, the record fails to establish that the petitioner will continue work in the field of endeavor.

On appeal, the petitioner states:

The service was focusing on my photography skills although by the time I received a quest for additional evidence I already received great acclaim in the United States based on my painting skills. Therefore I have clearly requested to evaluate my painting extraordinary abilities and achievements in order for me to continue contributing to this field in the US.

We do not concur with the director that the petitioner has failed to establish that she plans to continue working in her claimed area of extraordinary ability. Although the Form I-140 indicated that she was a “renowned photographer,” she clearly stated in her letter accompanying the petition that she claimed extraordinary ability as both a photographer and a painter. She further stated in the letter that she planned to showcase her work and to open a photography school. In addition, she submitted documentary evidence regarding her painting and photographic abilities. Thus, the petitioner should not have been forced to choose between her artistic achievements. We withdraw the director’s determination that the petitioner has not established that she planned to continue work in her area of expertise.

Nonetheless, this does not relieve the petitioner of her burden of proving that she does possess extraordinary ability in both photography and painting. 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.

The petitioner made no specific claims as to which criteria she believes are applicable to her. However, she has submitted documentation that is arguably evidence of the following criteria.¹

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 copy of a certificate indicating that she had been granted “The Outstanding Photographer Award” in a July 1998 photography contest, which occurred during Israel’s jubilee anniversary. The petitioner also submitted a copy of a 2002 certificate indicating that she won first place in the City of Ramat Gan photography competition, [REDACTED].” The petitioner submitted no documentation to establish that prizes won at either

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

of these competitions are nationally or internationally recognized as awards of excellence in the field.

The petitioner submitted a copy of a February 16, 1999 "Merit Certificate" awarded to her for her "significant role during the Israeli Women Day" and sponsored by the Women's International Zionist Organization (WIZO). In an April 20, 2007 letter, [REDACTED] stated that the petitioner "served as the main judge in the paintings competition" and "helped us promote the event and encourage women country-wide to join the event." The record contains no documentation that the certificate is a nationally or internationally recognized award for excellence in painting or photography.

In response to the RFE, the petitioner submitted a copy of a certificate indicating that she won the York Painters Award presented by the Jewish Museum in New York on October 25, 2006, and on appeal, the petitioner submits documentation indicating that she won the 2006 Gold Medal Award presented by the Tel Aviv Museum of Art in December 2006. Both of these awards were presented subsequent to the filing of the petition on July 6, 2006. The petitioner asserts that these awards should be considered because they were based on work she did prior to filing the petition. Nonetheless, her work had not been singled out for the awards prior to filing the petition and therefore is not evidence of her sustained national or international acclaim at the time she filed her petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The evidence does not establish that the petitioner 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.

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 work 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. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submitted copies of her 2006 cards validating her membership in the Professional Visual Artists Association, Israel and in the Painters and Sculptors Association, Israel. The petitioner also submitted a copy of an International Identity Card for Professional Artists, which is associated with UNESCO (United Nations Education, Scientific, and Cultural Organization). The petitioner submitted no documentation regarding the membership requirements for any of the organizations.

In response to the RFE, the petitioner submitted a copy of a March 20, 2007 letter from the International Association of Art, informing her that her honorary membership in the association was being continued from the previous year. According to the letter, signed by [REDACTED] as membership organizer:

Honorary Members are artists who were chosen by a jury of representatives from professional arts organizations and museums. This status is given to you thanks to your immense contribution to the distribution of art world-wide.

As previously noted, the International Association of Art is a part of UNESCO. Mr. [REDACTED] letter states that the petitioner's honorary membership is based on her "immense contribution to the distribution of art. It is not clear that the petitioner's membership is based on her work as a painter and photographer or some other standard associated with and set by UNESCO. Additionally, the petitioner submitted no evidence that she was a member of any other organization that required outstanding achievement as a condition of membership. An honorary membership in a single organization is not evidence of national or international acclaim.

The evidence does not establish that the petitioner 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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a copy of a March 2, 2006 article about her that indicates it is from the Art section of "weekend." The article does not identify the author of the article, and it is not clear as to the publication in which the article appeared. The petitioner submitted documentation from *The Jerusalem Post*, but the purpose of the documentation is unclear, as it does not appear to be about the petitioner or her work.

The petitioner also submitted a copy of an article from the magazine *Digital Camera*. The article is about the petitioner but is undated. Additional documentation provided about *Digital Camera* was taken from the Internet, is in Russian and is not accompanied by an English translation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3).

Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner submitted no documentation to establish that any of these publications constitute major media or is a major trade publication. The director determined that the petitioner did not meet this criterion and the petitioner does not pursue the issue on appeal.

The evidence does not establish that the petitioner meets this criterion.

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.

As discussed previously, the petitioner submitted an April 20, 2007 letter, from [REDACTED] [REDACTED] for the Israeli Women Day, in which she stated that the petitioner "served as the main judge in the paintings competition." According to [REDACTED] the Women's Day in Jerusalem was a "special event" whose "main goals were to create awareness to women's art and culture in Israel." It appears that the petitioner was selected for her participation because of her standing in the art community.

We note that this competition was held in 1999. The petitioner submitted no documentation that she has served on any subsequent panel as a judge or has otherwise participated in judging the work of others. The criteria are designed to help the petitioner established sustained acclaim. The petitioner's single role as a judge of a competition in 1999 does not provide evidence of sustained acclaim.

The petitioner did not pursue this issue on appeal and the evidence does not establish 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 documentation indicating that her work was displayed in Tel Aviv at the [REDACTED] [REDACTED] and [REDACTED], and in [REDACTED]. The director denied the petition based in part because the petitioner failed to specify whether her work was displayed as photographs or paintings. Because we have determined that the petitioner need not choose between her artistic endeavors of the purpose of this visa petition, this issue is not relevant to determining whether the petitioner meets this criterion.

The petitioner's evidence indicates that her work has been displayed in some of the better known art galleries in Tel Aviv. We find that the petitioner has submitted sufficient evidence to establish that she meets this criterion, and we withdraw the director's decision to the contrary.

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

To meet this criterion, the petitioner must show that she performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The director noted that the petitioner submitted no “identifiable evidence with the initial filing in support of this criterion,” but that in response to the RFE, the petitioner provided information regarding a painting that she did of [REDACTED] that was presented to him during his visit to Israel. The director concluded that the petitioner had failed to demonstrate how this painting satisfied this criterion.

The petitioner provided no additional evidence of this criterion on appeal. We concur with the director that she has not submitted evidence that she meets this regulatory 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 documentation suggesting that she would be paid \$120,000 for her work as the set designer and painter of “Legend of the 21st Century,” and that she was paid \$100,000 by the [REDACTED] to display her painting [REDACTED] in their cafes. On appeal, the petitioner states that the [REDACTED] had agreed to pay her \$140,000 for 60 of her paintings for their boutique hotel in midtown Manhattan. None of this evidence establishes that prior to filing the petition she “has commanded a high salary or other significantly high remuneration” in accordance with the plain wording of the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

The petition was filed on July 6, 2006; therefore, the evidence must establish that she “has commanded” a high salary or other remuneration prior to that date. The documentation regarding her compensated work as set designer and painter of “Legend of the 21st Century” includes a letter dated April 15, 2007 from [REDACTED] indicating that the petitioner “will be in charge” of the set and a check in the amount of \$120,000 dated April 30, 2007. Neither of these documents can establish that she “has commanded” a high salary prior to the filing date of the petition. Further, as the check was unprocessed, there is no evidence that she commanded any salary whatsoever after the filing date of the petition.

The letter from the [REDACTED] is dated August 25, 2007, and “confirms the agreement” that the petitioner will paint 60 paintings and one lobby painting for a proposed boutique hotel. This letter post-dates the filing date of the petition and cannot be considered evidence that the petitioner “has commanded” a high salary in the past. Further, the record does not contain a copy of the petitioner’s agreement with the [REDACTED]. While Mr. [REDACTED] claims that he has signed a 99-year lease with [REDACTED] to develop a boutique hotel at [REDACTED] in New York City and that the petitioner’s work will be displayed at the hotel, there is

no evidence of this lease or the intended hotel development in the record. Instead, the petitioner provided a news articles discussing the fact that [REDACTED] has developed other notable hotel properties in lower Manhattan with his partner [REDACTED] and that [REDACTED] personally collects contemporary Chinese art.

The letter from the [REDACTED] is dated May 2, 2007 and indicates that the Café “will pay the sum of \$100,000” to the petitioner. As this letter also post-dates the filing date of the petition, it cannot be considered evidence that the petitioner “has commanded” a high salary prior to the filing of the petition. Beyond the statements in the letter that the petitioner will be paid \$100,000, there is no additional evidence establishing that she actually received any payment from [REDACTED]

The petitioner indicates on appeal that these agreements provide her with a “significantly high remuneration.” However, she does not claim and offers no evidence that she received any of the previously described compensation or that any of the compensation would be significantly high remuneration “in relation to others in the field.” Accordingly, her evidence does not establish that she meets this criterion.

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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a painter or photographer 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 indicates that the petitioner is a talented painter and photographer, but is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field. 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.