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FILE:   
EAC 05 068 50719

Office: VERMONT SERVICE CENTER

Date: **DEC 16 2005**

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, Director  
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 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 December 16, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a Horticulture, Bonsai, and Ikebana 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, 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. "Honor Certificate" from the "Transportation Afforestation Members Association" stating that the petitioner received the "Honorary Title 'Red Flag Individual' of the Afforestation Beautification of 1993"
2. "Honor Certificate" from the "Chinese Artists' Association" and the "Chinese Bonsai Association" stating that the petitioner's flower arrangement "received the honorary title of the Outstanding Exhibition work" (2002)
3. "Honor Certificate" from the "Transportation Afforestation Members Association" naming the petitioner an "Afforestation Advanced Individual" (1999)
4. "Honor Certificate" from the "Chinese Artists' Association" naming the petitioner an "Outstanding Individual" (1995)
5. "Honor Certificate" from the "Bonsai Art Association of China" for the petitioner's "Outstanding Contribution in the field of Bonsai Art" (2001)
6. "Honor Certificate" from the "Fan Yu Tech Institute" stating that the petitioner received the title "Outstanding Teacher of year 2002 to 2003"

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (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 items 1 through 6, the petitioner has not submitted evidence showing the degree of recognition accorded to her awards. There is no evidence showing that these certificates are nationally recognized awards for excellence rather than institutional recognition. The evidence submitted by the petitioner does not indicate the total number of certificates distributed, the criteria used in determining recipients, or the level of publicity associated with the award presentations. 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 certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. In this case, the record includes no documentation from the awarding entities or the print media to establish that the petitioner's awards are nationally recognized awards for artistic excellence.

*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.

On appeal, the petitioner submits what is alleged to be evidence of her membership in the Shanghai Flower Art and Arrangement Association (SFAAA). The record, however, includes no evidence of the membership bylaws or the official admission requirements for this association. There is no evidence demonstrating that admission to membership in the SFAAA required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership.

*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 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.<sup>1</sup>

On appeal, the petitioner submits what is alleged to be an article about her published in *Beijing Daily News* in 2003. The translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). We further note that the petitioner has not provided the name of the author of this article or evidence showing that *Beijing Daily News* has substantial national readership. In this case, we find no evidence to demonstrate that the petitioner has earned sustained acclaim in the national media of China or the U.S.

*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.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, serving as a judge for a national competition involving professional artists is of far greater probative value than serving as a judge for a local competition involving amateur artists.

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<sup>1</sup> 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.

The petitioner submitted an "Appointment Certificate" allegedly issued by the China Artists' Association stating: "We especially appoint [the petitioner] as The 8<sup>th</sup> Annual Botanical garden design Contest Judge." The record, however, includes no information about this contest or evidence of the petitioner's activities as a judge. We note here that the plain wording of this criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." In this instance, the record lacks information regarding the nature of the petitioner's duties in this capacity, the names of the individuals she evaluated, and their level of expertise (i.e.- novice, amateur, or professional). Furthermore, we note the absence of published material or national publicity surrounding the petitioner's involvement at this contest. We cannot ignore that the statute and regulations require "extensive documentation" of sustained national or international acclaim. Without evidence showing that the petitioner's activities involved evaluating professional artists at the national level, we cannot conclude 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 wrote for *Jinlin People Daily*. The petitioner also submitted what she alleges is evidence of her authorship of two books entitled *Ideal Condition Flower Arrangement Art* and *Modern East and West Flower Arrangement – Rhyme of the Flower*.<sup>2</sup> There is no evidence of the field's reaction to these published works, nor any indication that they are widely viewed as significantly influential. Furthermore, there is no evidence showing that these publications enjoy substantial national or international readership.

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

The petitioner submitted various photographs of what are alleged to be her floral creations. The specific venues where these creations have been displayed have not been identified. In fact, there is no credible evidence (such as an event program or art brochure) confirming the petitioner's involvement in any art "exhibition" or "showcase" in the U.S. or China.

The petitioner submitted a document entitled [REDACTED] and an article entitled "Ikebana workshop held at Beijing" which mention that she conducted flower-arranging workshops at the "Shanghai County Fair Building" and at the "Beijing Art Center." We are not persuaded that conducting a "workshop" constitutes an "exhibition" or "showcase" for purposes of this criterion, nor is the evidence of record adequate to demonstrate the petitioner's actual presence at these events. In regard to the [REDACTED] document, a number of deficiencies and inconsistencies are immediately apparent. This document states:

[REDACTED]

The 24<sup>th</sup> Ikebana Flower Show Presented by Ikebana International, Shanghai Bay Area Chapter

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<sup>2</sup> The evidence submitted by the petitioner shows only the front cover of these books. The translations accompanying the book covers were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

\* \* \*

Ikebana 2003 displayed floral creations by the Bay Area's best artists of floral design.

\* \* \*

Where: Shanghai County Fair Building [REDACTED] Avenue.

Parking: Limited free, reserved parking in [REDACTED] . . between 9<sup>th</sup> & 7<sup>th</sup> Avenue.

Tickets: Purchased before April 5, 2003 \$5.00

The record reflects that the petitioner resided in China until she entered the U.S. on September 6, 2004. We cannot ignore that references to "the Bay Area," the "County Fair Building," [REDACTED], and [REDACTED] relate to the city of San Francisco rather than the city of Shanghai. Furthermore, it is unlikely that a promotion for an event held in Shanghai would be posted in English rather than Chinese. It is also unlikely that ticket prices would be listed in U.S. dollars rather than Chinese currency. The petitioner has not resolved these discrepancies. 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.

It must be stressed that an artist does not satisfy this criterion simply by arranging for his or her work to be displayed or sold. We find no evidence demonstrating that the petitioner's creations have been displayed at significant national venues. Nor is there any indication that the petitioner's works have been featured along side those of artists who enjoy national or international reputations. Furthermore, the petitioner has not demonstrated her regular participation in shows or exhibitions at exclusive venues devoted largely to the display of her work alone. The evidence presented by the petitioner is not sufficient to show that her exhibitions enjoy a national reputation or that participation in her exhibitions was a privilege extended to only top national or international artists.

*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 she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a document listing her as a Vice-chairman of the [REDACTED] but this document includes no address, phone number, or any other information regarding how this association may be contacted. Nevertheless, it has not been shown that this organization has earned a distinguished reputation at the national or international level. Nor has the petitioner submitted evidence showing her specific

responsibilities for the [REDACTED] and her individual importance to its overall success. We find the evidence is not adequate to demonstrate that the petitioner has performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

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 a 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.

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.