

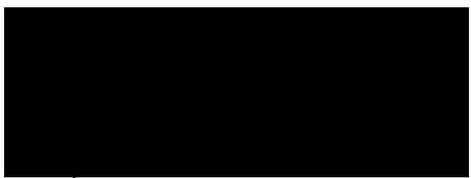
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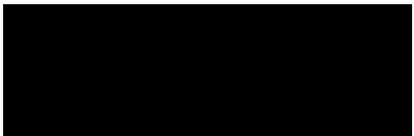
Office: VERMONT SERVICE CENTER

Date: DEC 21 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:



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 in the arts. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, counsel claims the director overlooked and failed to give sufficient weight to certain evidence and submits additional evidence. Counsel's contentions and the evidence submitted on appeal fail to overcome the deficiencies of the petition and the appeal will be dismissed.

Section 203(b) of the Act states, in pertinent part:

(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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the visual arts as an oil painter. We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not discussed below.

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

Counsel claims the petitioner meets this criterion by virtue of her receipt of the following citations in China: 1) a Gold Award in the 1994 China Oil Painting Salon Festival, 2) First Prize at the 1998 Chinese Oil Painting Landscape Exhibition, and 3) a Gold Award at the 1994 Exhibition of Outstanding Oil Painters. The record contains copies of the award certificates for the first two awards, but does not document the third. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record contains a letter from Zhu Ing Zhang, Secretary General of the Chinese Associates of Oil Painters, who states that his association hosted the 1994 China Oil Painting Salon and the 1998 China Oil Painting Landscape Exhibition. Secretary Zhang explains that these events were national exhibitions that represented the "highest level of contemporary Chinese oil painting" and that from over 3,000 paintings, five Gold Awards were granted in the Salon Exhibition and three First Prizes were awarded at the Landscape Exhibition. Secretary Zhang states that the award ceremonies took place at the China Art Museum and were televised nationwide. Even if this letter sufficed to establish the national recognition of these honors, the petitioner's awards were received nine and five years before this petition was filed and do not demonstrate sustained acclaim.

On appeal, the petitioner submits evidence that she received an Award of Excellence in 2005 for her work exhibited in the Seventh Annual Show of the North America Pastelists. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the petitioner does not meet this criterion.

(iii) Published material 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.

Counsel claims the petitioner meets this criterion because she was one of 12 oil painters included in a book entitled "Contemporary Outstanding Oil Painting" published in China; the subject of a review in the Chinese journal, *Fine Arts*; and because the Chinese language newspaper, *World Journal*, reported on the petitioner's solo exhibition in New York in 2003. This evidence does not establish the petitioner's eligibility under this criterion.

The submitted partial translation of the "Editorial Note" to "Contemporary Outstanding Oil Painting" states that the editors selected 12 painters whose work possesses "individual style and Charm" (capitalization in original) and that the volume is used as a textbook for art students and freelance artists "to open up their vision." The record contains no corroborative evidence that this volume is used in art schools throughout China. The petitioner also did not submit documentation of the book's circulation, distribution, sales, critical acclaim, or other evidence that the petitioner's inclusion in this book reflects national acclaim in China. We further note that this volume was submitted twice, initially and on appeal, with two different partial translations of the

“Editorial Note,” yet neither translation includes the title, date and author (or editors) of the volume as required by this regulatory criterion.

The remaining two documents were submitted with incomplete and improperly certified translations. The submitted full-page article about the petitioner in *Fine Arts* is accompanied by a translation of one incomplete sentence of the article’s text. The two-column article published in the *World Journal* regarding the petitioner’s exhibition in New York is accompanied by a similarly deficient translation of just two sentences of the article’s text. Supporting documents submitted in a foreign language must be accompanied by a full English language translation which the translator has certified as complete and accurate. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit a complete and properly certified translation of these documents, we cannot determine whether the evidence supports the petitioner’s claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner also failed to submit evidence that *Fine Arts* is a professional, major trade publication in China or that *World Journal* is a form of major media. We note, however, that newspapers published in the United States in a language that the majority of the population does not speak are not major media, publication in which would demonstrate national acclaim.

The record shows that the petitioner’s work has been featured in a book of contemporary oil painters in China. The petitioner submitted no evidence that this single publication of her work received significant recognition in her field, that the book was widely circulated or used by art students and other artists in China, or other evidence that this book demonstrates her national acclaim in China. Accordingly, the petitioner does not meet this criterion.

(iv) 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.

Counsel claims the petitioner meets this criterion because she served as a judge for the 1998 Henan Oil Painting Salon and was a member of the Academic Committee of Henan Provincial Calligraphy and Painting College. While the record documents these two accomplishments, the evidence indicates that the petitioner has served as a judge of other artists only in Henan province. The record is devoid of any evidence that the petitioner has served as a judge for national art competitions in China or otherwise judged the work of other visual artists in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

(vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains two scholarly works written by the petitioner: a book entitled “The Sunset of Schooling” and an article entitled “The Art Work Beyond Its Appearance.” The petitioner’s book is written in Chinese and was published in China in 2001. This 494-page book was submitted with the following English translation: “Sunset of Schooling[,] Written by Li, Lu [.] Published by Henan Fine Arts Publishing Company [.] Preface: Art Critics: [sic].” This cursory translation does not comply with the regulatory guidelines for the submission of evidence in a foreign language at 8 C.F.R. § 103.2(b)(3). The translation includes none of the book’s text and mistranslates the name of the publishing company, which is the Hunan (not Henan) Fine Arts Publishing Company. It may be infeasible to translate the entire text of such a large book. However, without a translation

of at least, for example, the table of contents and the introduction or preface, we cannot determine whether this book is a scholarly work in the petitioner's field. In addition, the record is devoid of any evidence that this book was critically acclaimed, significantly influenced artists or art scholars in China, or was otherwise recognized in the petitioner's field in a manner reflective of sustained national acclaim.

The petitioner's lengthy newspaper article, published in the September 20, 2003 edition of *Asian American Times*, is accompanied by an English translation of just two and a half sentences of the article's text. Because the petitioner failed to submit a complete and properly certified translation of this document, we cannot determine whether the evidence supports the petitioner's claim. See 8 C.F.R. § 103.2(b)(3). In addition, while counsel claims that *Asian American Times* is "a New York based very prestigious newspaper," the record is devoid of any evidence that this newspaper is a form of major media. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534; *Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506. Accordingly, the petitioner does not meet this criterion.

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

Counsel claims the petitioner meets this criterion because her work "has been exhibited and collected worldwide." Yet duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. We cannot ignore that frequent exhibition of a visual artist's work is inherent to his or her occupation.

The record in this case shows that the petitioner exhibited her work in two national painting exhibitions in China in 1994 and 1998, in which she won two awards. As discussed above under the third criterion, an article purportedly about the petitioner's solo exhibition in New York was submitted with a deficient English translation. The only other evidence that mentions this exhibition is the letter from [REDACTED] of the Pastel Society of America, that was submitted on appeal. [REDACTED] states that he first became acquainted with the petitioner's work when he saw her exhibition in Queens, New York in 2003. The record contains no evidence regarding the venue or significance of this exhibition. The petitioner also submitted no evidence that this exhibition received critical acclaim in art journals or other media in the United States. Even if the petitioner's work was acclaimed in the 1994 and 1998 national exhibitions in China, the record does not demonstrate that she sustained such acclaim through any subsequent exhibition of her work in China, the United States or other countries. Accordingly, the petitioner does not meet this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The record shows that one of the petitioner's paintings was sold in 1994 at a fine arts auction in China for 105,000 *ren min bi* (RMB). The petitioner submitted a letter from Song Chenguang, Manager of the Jin-Shui Calligraphy and Painting Gallery in Henan, China, who states that an oil painting of a size comparable to that of the petitioner's auctioned work would sell for over 100,000 RMB only if the painting was made by one of the most prestigious painters in China. Even if this evidence were sufficient to demonstrate that the petitioner's painting sold for a price significantly higher than that paid for other artists' work in China, the sale of a single painting nine years before this petition was filed does not demonstrate the requisite sustained acclaim. The record contains no evidence that the petitioner's work has repeatedly sold at prices much higher than that paid

for the work of other oil painters in China or the United States or at prices comparable to those paid for the work of such artists at the very top of their field. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case does not establish that the petitioner has achieved sustained national or international acclaim as an artist placing her at the very top of her field. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.