

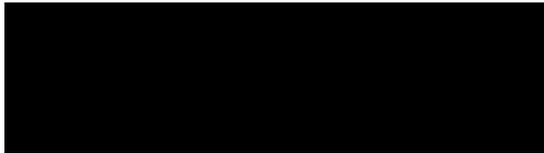
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U.S. Citizenship
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Services

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FILE:

[Redacted]
EAC 05 248 51468

Office: VERMONT SERVICE CENTER

Date: **DEC 27 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.

Mari Johnson

R 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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on February 3, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a "Bonsai Artist." The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since April 2001. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as an artist in this country.

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 an undated certificate that states:

THE NATIONAL ART AWARD

THIS CERTIFICATE IS HONOURLY AWARDED TO [the petitioner] FOR HIS CONTRIBUTION [sic] IN PROMOTING TRADITIONAL ART BY DEPARTMENT OF CULTURE

We note that the word "contribution" is misspelled on the award certificate. Further, although the wording on the certificate is completely legible, for some inexplicable reason, the Department of Culture seal is completely illegible. There is no documentation from the awarding entity or the print media to establish that this award is a nationally or internationally recognized award.

The petitioner submitted an undated certificate allegedly issued by the "Asia-Europe Foundation Philippine Association" for "BEST ARTIST IN SPREADING CULTURE AND ART." There is no evidence showing that this award reflects national or international recognition rather than organizational recognition.

On May 23, 2005, the director issued a request for evidence stating: "It is noted that the criteria used to award [the petitioner's] prizes are not clearly delineated in the record. Please provide documentation to establish who was eligible to receive the awards, how many competitors were considered, and the criteria used to grant the prizes."

In response to the director's request for evidence, the petitioner submitted a second certificate entitled "NATIONAL ARTS AWARD" (dated January 10, 1998) that refers to the petitioner as a "MOST PROMISING ARTIST." The certificate bears a computerized signature from "John S. McCall, Chairman of Committee," but the name of the committee and the issuing entity have not been identified. There is no documentation from the awarding entity or the print media to establish that this award is a nationally or internationally recognized award. Further, we note that this award refers to the petitioner as a "PROMISING ARTIST." This visa classification, however, is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

The petitioner also submitted an undated "Certificate of Appreciation" allegedly issued by the "Department of Education Development" of Malaysia. 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. Because the translation accompanying the petitioner's certificate was not certified as required by the regulation, the certificate cannot be accepted as evidence. Nevertheless, the award is deficient in that it reflects institutional

recognition rather than national or international recognition. Further, the petitioner does not explain how receiving a "Certificate of Appreciation" reflects excellence in horticulture art.

We note that the petitioner failed to respond to the request for evidence pertaining to the eligibility criteria for his awards. Pursuant to 8 C.F.R. § 103.2(b)(14), the petitioner's failure to submit requested evidence that precludes a material line of inquiry constitutes acceptable grounds for denial of his petition.

On appeal, the petitioner submits a "Malaysia Golden Arts Award" dated March 6, 1998. However, there is no documentation from the awarding entity or the print media to establish that this award is a nationally or internationally recognized award.

The record includes no information about the competition for the petitioner's awards (such as the eligibility criteria, the number of entrants, or the percentage of entrants who earned some type of recognition). Nor is there evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. Simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. 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 to establish that his award certificates enjoy significant national or international stature. The record includes no such documentation. Furthermore, there is no evidence showing that the petitioner has received any awards subsequent to 1998; therefore, whatever prior level of acclaim he had previously earned has not been sustained.

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 evidence of his membership in the Organization for Academy Art (OAA). The record, however, includes no evidence of the membership bylaws or the official admission requirements for this organization. There is no evidence demonstrating that admission to membership in the OAA required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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 bonsai creations. Without further evidence, it cannot be determined that the petitioner's creations are among those shown. Nevertheless, the plain language of this criterion requires the petitioner to provide evidence demonstrating that his work has been "displayed" at "exhibitions or showcases." In this case, the specific names and locations of the exhibitions and showcases that featured the petitioner's work have not been identified. In fact, there is no contemporaneous evidence (such as an event program or brochure) demonstrating the petitioner's involvement in any horticulture exhibition or showcase in the United States or Malaysia.

We find no evidence demonstrating that the petitioner's works 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 his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his work alone.

In this case, the petitioner has failed to demonstrate that he 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 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 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.