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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **NOV 16 2005**
EAC 03 163 50302

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:

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

S 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 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 April 28, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a graphic arts designer.

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 a Certificate of Honor and a Certificate of Merit from the Editor-in-Chief of *The Famous Figures of the Contemporary Arts Circles in China*. The Certificate of Merit states: "IN VIEW OF OUR OUTSTANDING CONTRIBUTIONS AND REMARKABLE CHIEVEMENTS [sic] TO THE ARTS CIRCLES, YOU HAVE RECORDED IN A LARGE AND AUTHORITY DICTIONARY [sic]."

The Certificate of Honor states: "YOUR WORKS OF ART HAVE TAKEN PART IN THE WHOLE SET SHOW OF THE FAMOUS FIGURES WORKES [sic] EXHIBITION OF THE ARTS CIRCLES IN CHINA, AND GAINED Silver PRIZE [sic]. SO WE AWARD THE CERTIFICATE TO YOU AS AN ENCOURAGEMENT." The word "Silver" and the petitioner's name are handwritten into blank spaces on the certificate.¹ Given the glaring inconsistency between the original version and the appellate version, the misspellings, the grammatical errors, and the fill-in-the-blank entry options on this certificate, it is not possible to conclude that this certificate is tantamount to a nationally recognized prize for artistic excellence. 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.

The petitioner also submitted certificates stating that his work appeared in *A Collection of the 20th Century International Notable Works* art volume and that his name appeared in *The Chinese Modern Notable Catalogue*.

In regard to the certificates stating that the petitioner and his work were included in *A Collection of the 20th Century International Notable Works*, *The Chinese Modern Notable Catalogue*, and *The Famous Figures of the Contemporary Arts Circles in China*, we note that the record includes no evidence showing the petitioner's actual published entry in these three publications. Even if such evidence were to be provided by the petitioner, we note that an artist's limited entry into a comprehensive directory or art volume does not constitute a nationally recognized award for excellence. Inclusion in an art volume or biographical dictionary is far more relevant to the "published materials" criterion.

The petitioner also submitted a "fill-in-the-blank" certificate stating that he was "invited to present" at an art exchange exhibition in Australia in 1997. In this instance, the petitioner's name and the date are entered into blank spaces. The record does not indicate how many individuals received this "International Cultural Diploma," but the existence of a pre-printed form certificate suggests multiple recipients.

The petitioner also submitted a Certificate of Merit stating that his work won "1st prize and outstanding gifted prize" at the Shanghai Calligraphy Competition in 1979. Such an award is reflective of local recognition, rather than national or international recognition. The record contains no evidence showing that the petitioner has won a top prize or award at a juried art competition at the national or international level.

¹ On appeal, the petitioner submits the exact same certificate, but the word "Silver" is not handwritten into the blank space. The certificate reads ". . . AND GAINED _____ PRIZE." [sic]

The significance and importance of the certificates presented by the petitioner are not self-evident. The petitioner offers no supporting evidence showing that these certificates constitute top honors at the national or international level. It should be emphasized that the petitioner must submit documentary evidence showing the degree of recognition accorded to his awards. The evidence provided does not indicate the total number of certificates distributed, the criteria used in determining recipients, or the level of media coverage 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 to establish that the certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally or internationally recognized cannot suffice to satisfy 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.

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 are alleged to be his membership certificates for the China Artists Association and "The Cultural Research Institute of the Chinese and Foreign Notables." The membership certificate for The Cultural Research Institute of the Chinese and Foreign Notables states: "Owing to your [sic] achievements [sic] in the culture and art and contributions in developing national culture and cultural exchange between Chian [sic] and foreign countries" [remaining text illegible] The frequent misspellings and poor quality of this certificate raise serious questions regarding its authenticity. The petitioner has not resolved these discrepancies with competent objective evidence. *See Matter of Ho* at 582, 591-92. Even if we were to accept the authenticity of this certificate (which we do not), the record includes no evidence of the bylaws or official membership requirements for The Cultural Research Institute of the Chinese and Foreign Notables.

The petitioner also submitted a translation of a certificate issued by the "Institute of Traditional Chinese Paintings in Henan Province" stating: "THIS IS TO CERTIFY THAT YOU QUALIFY IN FIRST GRADE NATIONAL ARTISTS ACCORDING TO THE REGULATIONS OF TITLE PROFICIENCY OF CUTURAL [sic] CIRCLES IN HENAN PROVINCE." The clarity of the photocopy of the original certificate submitted by the petitioner is of such poor quality that it appears as though the certificate has been photocopied numerous times. The outside border of the certificate is half-missing and the difference between the style of the text for petitioner's name and the style of the text for the remainder of certificate is immediately apparent.

On appeal, the petitioner submits a letter allegedly issued by the Institute of Traditional Chinese Paintings in Henan Province. At the top of this letter (most of which was written in Chinese), the name of the institute appears in English as follows: “LNSTITUYE [sic] OF TRADITIONAL CHINESE PAINTINGS IN HENAN PROVINCE.” At the bottom of the letter, there is a seal on which the name of the institute appears again in English, but this time as “INSTITUTE OF TRADITIONAL CHINESE PAINTINGS IN HENAN PROVINCE.” The incorrect spelling of “Institute” in English at the top of this letter raises questions regarding its authenticity. The letter offers general information about the institute, but it does not cite any particular membership bylaws or official admission requirements. There is no evidence to establish that the petitioner’s membership in this organization required outstanding achievement or that he was evaluated by art experts at the national or international level in consideration of his admission to membership.

The petitioner also submits a letter allegedly issued by the China Artists Association listing its membership requirements. This letter has no address, phone number, or any other information through which this association may be contacted in order to verify the letter’s contents or the validity of the petitioner’s membership status. Nevertheless, the information provided in the letter does not establish that the petitioner was evaluated by art experts at the national or international level in consideration of his 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.²

The petitioner submitted what is alleged to be a notice informing him of inclusion of his work in *Twenty Century International Culture Book (Comprehensive Volume I)*. The petitioner also submitted partially translated “invitation” letters from the *Dictionary of World Notables* and the *World Notables Catalog*, but these letters were not accompanied by a full English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, there is no evidence of the actual published material about the petitioner appearing in these publications. In regard to the certificates stating that the petitioner and his work were included in *A Collection of the 20th Century International Notable Works*, *The Chinese Modern Notable Catalogue*, and *The Famous Figures of the Contemporary Arts Circles in China*, we note that the record includes no evidence of the actual published material for these three publications either. The plain wording of

² 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.

this criterion, however, requires the petitioner to submit “published material about the alien” and evidence of “the title, date, and author of the material, and any necessary translation.” The record includes no such evidence.

On appeal, the petitioner submits what is alleged to be an article entitled “Introduction to [the petitioner]” in *China Contemporary Calligraphers and Artists Magazine: The 4th Edition.*” The petitioner, however, has failed to provide the date and the author of this material as required by this criterion. Furthermore, there is no evidence showing that this magazine has substantial national readership.

We find no evidence to demonstrate that the petitioner has earned sustained acclaim in the national media of the United States or China.

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.

The petitioner submitted a Letter of Appointment allegedly issued by the China Artists Association stating: “[The petitioner] from Institute of Traditional Chinese Paintings in Henan Province is now appointed as vice chairman of Appraisal Committee of National Arts Exhibition in Henan Province.”

On appeal, the petitioner submits a second letter allegedly issued by the China Artists Association stating that he was appointed as vice chairman and “Committee Member of Appraisal Committee of National Art Works Exhibition” from 2001 to 2004.

The preceding letters, which appear to relate to the same appointment, have no address, phone number, or any other information through which the China Artists Association may be contacted. Furthermore, the record includes no information about the exhibition or evidence of the petitioner’s activities as a judge for this committee. 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 events at which he served as a judge, the names of the individuals he 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 exhibition. 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 he meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted letters of support from Chinese arts organizations based in New York. These letters describe the petitioner as a talented artist, but they are not adequate to demonstrate that his artistic contributions have had a major impact on the greater field. Original submissions for display or exhibition are expected of artists and do not set the petitioner apart from other capable professionals. The record does not indicate the extent of the petitioner's influence on other artists, nor does it show that any specific works by the petitioner are particularly renowned as works of contemporary art. The petitioner has not shown that his works have garnered widespread attention, often command unusually high prices, or are in high demand among museum curators or gallery owners throughout the United States or China. Thus, there is no indication that the petitioner has made a contribution of major significance to his field.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. Without extensive documentation showing that the petitioner's artwork has been unusually influential or highly acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance.

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

On appeal, the petitioner claims that he satisfies this criterion, but the record contains no evidence to support his assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record includes no evidence showing that the petitioner has authored a "scholarly" article or that such an article has been widely circulated or viewed by others in his field as significantly influential.

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

The petitioner submitted various photographs and samples of what are alleged to be his artistic creations. The petitioner also submitted a letter allegedly issued by the China Foreign Art Exhibition Company stating that it has collected the petitioner's work, but this letter has no address, phone number, or any other information through which this company may be contacted. We further note that letter is a pre-printed form letter with the petitioner's name entered into a blank space by the salutation.

In this case, the specific venues where the petitioner's artwork has been displayed have not been identified. In fact, there is no contemporaneous evidence (such as an event program or art brochure) demonstrating the petitioner's involvement in any art exhibition or showcase in the U.S. or China. As noted previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici* at 158, 165.

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 works have been displayed at significant national venues. Nor is there any indication that the petitioner's works have been featured alongside 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. The evidence presented by the petitioner is not sufficient to show that his exhibitions enjoy a national reputation or that participation in his 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 he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted letters of appointment for various positions (such as vice chairman of China Folk Art Ensemble, vice chairman of Appraisal Committee of National Arts Exhibition in Henan Province, and researcher at the Institute of Traditional Chinese Paintings in Henan Province), but these letters have no address, phone number, or any other information through which the organizations offering those appointments may be contacted. Nevertheless, it has not been shown that these organizations have earned a distinguished reputation at the national or international level. Nor has the petitioner provided evidence showing his specific responsibilities for these organizations and his individual importance to their overall success. In this case, the evidence is not adequate to demonstrate that the petitioner has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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 a March 4, 2002 letter allegedly issued by the Institute of Traditional Chinese Paintings in Henan Province.³ This letter states that the petitioner earns a yearly salary of RMB 40,000 Yuan and that he earns another RMB 60,000 Yuan for his creative works.

The petitioner also submitted a March 12, 2003 letter from Andy Lin, President of Linco Printing, Inc., stating that his company will employ the petitioner at an “annual salary of \$32,000.”

The record, however, includes no official financial documentation (such as payroll records or income tax forms) showing the petitioner’s actual earnings for any given period of time prior to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Further, the plain wording of this criterion requires the petitioner to submit evidence of a high salary “in relation to others in the field.” The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner earns a level of compensation that places him among the highest paid artists in the United States or China.

On appeal, the petitioner submits what he alleges is a receipt (dated April 10, 2002) from the “Zhengzhou City Super Market Building” showing that it paid an amount of “one hundred twenty thousand RMB yuan”

³ This letter has no address, phone number, or any other information through which this institute may be contacted.

for “6,000 videotapes of [the petitioner’s] career.” The record contains no evidence establishing the authenticity of this handwritten receipt or evidence showing that such videotapes exist. For example, the record includes no credible documentation such as an income tax form showing that this money was reported to the government or a bank statement reflecting deposit of the proceeds from the sale.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner claims that the receipt for 6,000 videotapes discussed under the preceding criterion is evidence of his commercial success. The plain wording of this criterion, however, indicates that it is intended for “performing” artists such as musicians and actresses rather than visual artists such as the petitioner. Nevertheless, as previously noted, there is no evidence establishing the authenticity of the receipt or evidence confirming the existence of the videotapes. Even if we were to accept the authenticity of the receipt (which we do not), there is no indication that selling 6,000 videotapes is a substantial quantity given the immense size of China’s population. Nor has the petitioner shown that his videotape has consistently generated greater sales than that of comparable videotapes on the market. In this case, there is no evidence showing significant national or international distribution of the petitioner’s videotape outside of Zhengzhou City or evidence of his widespread commercial success.

We find that the petitioner has failed to demonstrate 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 as a graphic artist 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.

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.