



U.S. Citizenship
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FILE:

[Redacted]

SRC 05 008 51391

Office: TEXAS SERVICE CENTER

Date:

OCT 11 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 that he qualifies 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 October 12, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Festive Lantern, Kite Artist, Merchant." 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 June 1998. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than six years), it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation 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, 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 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. "Award Certificate" for "Excellence in Flower Lantern Design in the 5th Annual Art Festival of Shenyang City" (1994)¹
2. Certificate for "Fourth award in Qiaoshi Cup 5th National Kite Contest" (1995)
3. Certificate for "First award of the Big Solid type of kite Designs in Qiaoshi Cup 5th National Kite Contest" (1995)
4. Certificate for "Third Place award of the 2nd Annual Kaifeng International Kite Festival" (1993)
5. Certificate from "The Folk Artists' Association" issuing the petitioner "the Title of Chinese Folk Art Expert" (1999)
6. Certificate stating that the petitioner "won the Excellence Award at the 2nd Annual International Kite Festival in Beijing" (1989)
7. Certificate for "First Place award in the 2nd Annual International Kite Festival of Kaifeng" (1993)
8. Certificate for "First Place award in the 3rd Annual Countrywide Kite Festival of Kaifeng" (1993)
9. Certificate for "First Place award among the Phoenix type in the 3rd Annual Countrywide Kite Festival of Kaifeng" (1993)

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 9, there is no evidence of publicity surrounding the petitioner's awards or evidence showing that they enjoy a significant level of recognition. Simply receiving an award certificate with the word "national" or "international" in the title does not satisfy this very restrictive criterion. Because the statute requires "extensive documentation" of sustained national or international acclaim, the petitioner must submit contemporaneous evidence showing that his awards enjoy significant national or international stature.² In this case, the record contains no documentation from the awarding entities or print media to establish that the petitioner's awards are nationally or internationally recognized awards for excellence.

¹ This award reflects local recognition rather than national or international recognition.

² For example, large-scale competitions typically issue event programs listing the order of events and the names of the participants. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the competitions in which he received awards.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant awards subsequent to 1999. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in China during the 1990's.

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 argues that his "award for . . . membership issued by the Artists' Association of China" satisfies this criterion. The record, however, includes no documentation of the petitioner's membership in the "Artists' Association of China." 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 petitioner submitted a certificate from "The Folk Artists' Association" conferring upon him "the Title of Chinese Folk Art Expert." It has not been established, however, that receiving this title is tantamount to membership in the Folk Artists' Association. Nevertheless, there is no evidence of the bylaws or official membership requirements of the Folk Artists' Association to demonstrate that admission to membership requires outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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 he alleges is evidence of his authorship of an article entitled "Aesthetic Character of the Kite" in the *Yanbian News Daily*. The translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, there is no evidence showing that this article was actually published under the petitioner's name or evidence of its significant national or international distribution. Nor is there supporting evidence showing that the petitioner's article is viewed throughout his field as significantly influential.

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 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 September 18, 2004 letter accompanying the petition does not adequately detail how the petitioner intends to continue his work in the United States.

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.