



U.S. Citizenship
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Services

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FILE:

[Redacted]
SRC 04 252 51768

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 in the arts. The director determined the petitioner had not established that she 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on September 28, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Folk Artist, Consultant." 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 2000. 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 the petitioner 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 the following:

1. Certificate stating: "Your paper-cut work: baby cat was awarded the second prize in the Ji Lin Province the first session Arts Festival." (1989)
2. Certificate from the "China Culture Department" stating: "Owning [sic] your prominent contribution, we conferred you the title: China contemporary famous Artist." (1995)
3. Certificate stating: "Your paper-cut products were awarded First Prize in the 'Hua Xia charming paper-cut artistic presentation' held by the China Arts museum." (1996)
4. Certificate stating: "Your product: Dawn (paper-cut) was awarded as the Silver Prize in the He Nan Province First Session Folk Handicrafts museum." (1993)
5. Certificate of Honor from the China Artists' Association stating: "Your product has been chosen into the book: *China Contemporary Folk Arts Collection*, which is edited by our Association." (1992)¹
6. Certificate of Honor from the Ji Lin Province Public Government "for encouragement in order to praise [the petitioner's] prominent contribution in the field of spreading traditional Chinese Culture." (undated)
7. Certificate of Honor from the China Artists' Association stating: "Owning [sic] your prominent contribution on broadcasting traditional culture, we especially conferred you as the title: outstanding folk handicraft master in 1996."
8. Certificate of Honor from the Shen Yang City Culture Bureau stating: "Your farmer-drawing products were given the high praise . . . during this urban traditional culture exchange activity." (1994)
9. Certificate stating: "Your drawing products were awarded Silver Prize in the 'Hua Xia charming paper-cut artistic presentation' held by the China Arts museum." (1996)

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.

Item 1, 4, 6, and 8 reflect local or provincial recognition, rather than national or international recognition. 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. Nor is there any information regarding the selection criteria or the total number of recipients. Awards regularly bestowed upon a large number of recipients are of minimal evidentiary weight. Because the statute requires "extensive documentation" of

¹ There record contains no actual evidence of the petitioner's published entry in this book.

sustained national or international acclaim, the petitioner must submit contemporaneous evidence showing that her awards enjoy significant national or international stature. In this case, the record contains no supporting documentation from the awarding entities or print media to establish that the petitioner's awards are nationally recognized awards for artistic excellence.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant awards subsequent to 1996. The absence of such awards indicates that the petitioner has not sustained whatever acclaim she 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.

The petitioner submitted a "Technician Occupation Qualification Certificate," but this document does not constitute membership in an association. Furthermore, we do not find that fulfillment of basic certification requirements is evidence of outstanding achievement.

The petitioner also submitted a Certificate of Honor inviting the petitioner to membership in the China Artists' Association. The record, however, does not include the membership bylaws or official admission requirements for this association. There is no evidence showing that admission to membership in this association required 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 she alleges is evidence of her authorship of articles in the *New-Culture Newspaper* and the *Yan Ji City Evening Newspaper*. The translations accompanying these articles were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, there is no evidence showing that these articles were actually published under the petitioner's name or evidence of their significant national or international distribution. Nor is there supporting evidence showing that the petitioner's articles were viewed throughout her field as significantly influential.

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

It must be stressed that an artist does not satisfy this criterion simply by arranging for her work to be displayed; otherwise most, if not all, visual artists would satisfy this criterion, rendering it meaningless. In this case, the petitioner has not submitted evidence demonstrating that her 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 her regular participation in shows or exhibitions at major 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.

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 September 8, 2004 letter accompanying the petition does not adequately detail how the petitioner intends to continue her 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.