

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY

Bu

[Redacted]

FILE: [Redacted] LIN 04 016 52411 Office: NEBRASKA SERVICE CENTER Date: OCT 17 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:

[Redacted]

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

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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.

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 as a visual artist. The petitioner initially submitted supporting materials including photographs of some of his paintings, documentation of his Vermont Studio Center Freeman Fellowship, four media articles that discuss or mention his work, evidence of the display of his work in three exhibitions, documentation of his judgment for art contests, and evidence regarding his teaching of art in the Philippines. In response to the director's Request for Evidence (RFE), the petitioner submitted additional evidence regarding his Freeman Fellowship, one exhibition, and the sources that printed the media articles previously submitted. On appeal, the petitioner submits further information regarding a magazine and a newspaper that published articles mentioning the petitioner and a letter

and additional information from an art center that has displayed the petitioner's work. 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.

The petitioner submitted evidence that he received a Vermont Studio Center Freeman Fellowship to support his two-month residency at the Center from September 29 to November 22, 2002. The petitioner is listed as one of two winners from the Philippines in the Center's Asian Artists Program. The submitted excerpt from a brochure of the Center explains that this program, "founded in 1992 and funded by the Freeman Foundation[,] provides two-month Vermont Studio Center Residencies to two outstanding artists apiece from each of ten countries in Asia." In his RFE response, the petitioner submitted the application form and brochure for the 2004-2005 program which includes a photograph of the petitioner.

An article published in the October 7, 2002 edition of the *Mindanao Times* and entitled "Ben Bañez and His Vermont Studio Center Freeman Fellowship" states that the petitioner "deserves to be identified as Davao's, perhaps, the Philippines' first 'Cutting edge' artist to be recognized by an international jury when he won the prestigious Vermont Studio Center Freeman Fellowship." The record does not establish that the *Mindanao Times* is a national publication in the Philippines, rather than a local newspaper for the Mindanao region. The record contains no other evidence that the Asian Artists Program fellowship is nationally or internationally recognized in the field in the Philippines, the United States, or other countries, outside of the fellowship applicants and recipients.

While the petitioner's fellowship resulted from a national competition with other Filipino artists, the record does not establish that the fellowship itself constitutes a nationally or internationally recognized prize or award, receipt of which reflects the requisite sustained acclaim. 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.

The petitioner submitted five media articles, none of which satisfy this criterion. The first article, as discussed above under the second criterion, was published in the *Mindanao Times*. This article discusses the petitioner, his work and his receipt of the Freeman Fellowship from the Vermont Studio Center. In his RFE response, the petitioner submitted a printout from an unidentified source entitled "Philippines Newspaper Directory," which includes the *Mindanao Times* in a list of 17 other newspapers, and a printout from the November 28, 2001 online edition of the *Mindanao Times*. Neither printout demonstrates that the newspaper is nationally circulated or otherwise considered to be a major media source in the Philippines. Hence, the article does not meet this criterion.

The second article, "Beyond the Tribal: Rethinking Mindanao," was featured in the 1998 edition of *Pananaw Philippine Journal of Visual Arts*. The submitted copy shows that this journal is published by the National Commission for Culture and the Arts in the Philippines as an initiative of the 1995-1998 Committee on Visual Arts. While this evidence indicates that the journal is a professional publication in the petitioner's field, the submitted article discusses the art of the Mindanao region and only briefly mentions the petitioner's work. The

14-page article includes just two and a half paragraphs about the petitioner's art and includes one photograph of one of the petitioner's paintings among photographs of 27 other artworks. On appeal, counsel contends that the regulation does not require that an article focus on the alien in order to satisfy this criterion. However, as explained in our preliminary comments, we are bound to evaluate this evidence as it reflects, demonstrates or is consistent with sustained national or international acclaim. One brief mention of the petitioner in an article concerning the art of one region of the Philippines and published five years before the petition was filed does not reflect the requisite sustained acclaim. Consequently, this article does not satisfy this criterion.

The third article was submitted as a printout from the website of the National Commission for Culture and the Arts in the Philippines. The article is entitled "Crossbred and Émigré: Visual Art in Flux" and includes one sentence with the petitioner's name: "Yet another parallel development is the ascendance of a premeditated shock aesthetic prominent in works of artists such as Jason Moss, Jose Legaspi, Alwin Reamillo, Ben Banez, and Manuel Ocampo." While the Commission's website might be a form of major media, the submitted article is not about the petitioner and does not meet this criterion.

The fourth article was published in the August 11, 1997 edition of *Graphic* magazine, is entitled "An Americana in the Philippines" and discusses the life of Aida Rivera Ford, the wife of the Filipino artist and the petitioner's teacher, Victorio Edades. The article includes a photograph of Ms. Ford unveiling a statute of her husband that was sculpted by the petitioner and another artist. The photograph caption identifies the petitioner, but the article makes no mention of him or his work. The fifth article was published in the September 27, 1990 edition of *Graphic* and is also not about the petitioner. Rather, the article discusses the life and work of his teacher, Victorio Edades. The article only once mentions the petitioner as one of Mr. Edades first students who has "veered . . . into apocalyptic surrealism." Although *Graphic* magazine may be a nationally circulated publication, the two submitted articles are not about the petitioner and were published six and 13 years before the petition was filed. Consequently, these articles do not satisfy 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.

The petitioner submitted a letter from the Davao City Water District inviting him to be a judge for the "Regionwide On-The-Spot Poster Making Contest," but no evidence that he accepted the invitation and actually judged the competition. The record also contains the program for the Second DCWD Kids Art Contest Collage-Making on November 17, 2000 and lists the petitioner as the representative of the Board of Judges. This document does not satisfy this criterion because it indicates only that the petitioner judged the work of children – not established artists in his field. Finally, the petitioner submitted a certificate of appreciation awarded to him by the Philippine Women's College of Davao for "sharing his time and expertise as a Member of the Board of Judges during the Poster-Slogan Contest and Diorama Making Contest at the PWC Pavilion." The petitioner submitted no evidence that the referenced contests were open to established artists throughout the Philippines, rather than limited to the students of a local college. Hence, his judgment of those contests does not reflect national acclaim.

The petitioner also submitted evidence that he taught art at the Ford Academy of the Arts in the Philippines. While his teaching undoubtedly required critical assessment of his students' artwork, such judgment does not meet this criterion. Duties or activities routine or inherent to an occupation do not demonstrate the requisite sustained acclaim. The petitioner submitted no evidence that he has judged the work of other visual artists in a