



U.S. Citizenship
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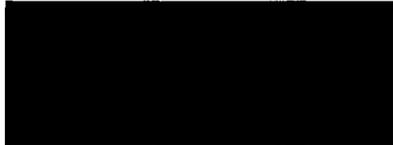
FILE: EAC 03 238 54230 Office: VERMONT SERVICE CENTER

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:



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.

for 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 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 in the arts. The petitioner initially submitted supporting evidence of her academic credentials and scholarships, seven certificates of merit and "winning notifications" for her work in various exhibitions, and six recommendation letters from artists and gallery owners in Japan. On appeal, the petitioner submits additional evidence including further information regarding her Rotary Fellowship, two articles from Japanese art and culture magazines, three copies of the Japanese edition of *Artnews* that contain a gallery advertisement with her name, documentation of nine exhibitions of her work, letters verifying the sale of three of her sculptures, and six additional support letters.

We first address counsel's contention (made in her Motion to Reconsider) that the director should have issued a Request for Evidence (RFE) before denying the petition pursuant to a Citizenship and Immigration Services (CIS) Policy Memorandum: William R. Yates, CIS Assoc. Dir., Operations, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)*, (Feb. 16, 2005). This memorandum was released after the director issued his decision. At that time, the director correctly applied the relevant regulation. Although 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing," the regulation does not require issuance of an RFE in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the regulation does not require solicitation of further documentation.

Furthermore, even if the director committed a procedural error in this case by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

We address counsel's remaining contentions and the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria that are 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 claims eligibility under this criterion by virtue of her receipt of three certificates of merit, four winning notifications, a Rotary fellowship and a scholarship from Nihon University. The record includes copies of three certificates of merit presented to the petitioner for work exhibited in three exhibitions in Korea in 1986 when the petitioner was an undergraduate student. Catalogues and additional documents accompany the certificates, but are printed in Korean and were submitted without certified English translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). The record is devoid of any evidence regarding the significance of the petitioner's certificates or the selection criteria and scope of these exhibitions. Hence, the evidence submitted does not establish that these certificates of merit constitute nationally recognized prizes or awards.

The record also fails to establish the significance of the petitioner's four "Annual Nika-Ten Winning Notifications" from 1992 through 1995. In Hee Lee, a Korean artist working in Japan, explains that "[t]his is an internationally recognized competition and winning it puts an artist in the forefront of the contemporary art arena. Ms. Kim won the Nika-Ten competition from 1992-1995 and received extensive favorable press." Yet the record contains no further documentation of these exhibitions or any evidence of media coverage. Moreover, even if these awards were nationally recognized, they would only evidence the petitioner's past acclaim. The notifications do not demonstrate that the petitioner received any prizes or awards for her work in the eight years between her most recent Nika-Ten notification in 1995 and the filing of her petition in 2003.

Finally, the petitioner submitted evidence that she received a Rotary Yoneyama Memorial Foundation Fellowship to support her graduate studies at Tama Art University in Japan and a scholarship from Nihon University in Tokyo to pursue post-graduate studies. Scholarships, fellowships and other forms of merit-based financial aid do not meet this criterion because they are awarded only to students to support their education. The petitioner's fellowship and scholarship evidence her achievements as an art student, but they are not prizes or awards granted to her as a professional artist. On appeal, counsel submits a printout from the website of

Rotary International to show that the "Rotary Club of Tokyo is an internationally recognized foundation." However, the club's international recognition does not render all their fellowships into internationally recognized prizes or awards for established artists or other professionals. The submitted printout does not contain any detailed information about Rotary fellowships, let alone demonstrate that the petitioner's specific fellowship was equivalent to a nationally or internationally recognized prize or award in the arts. 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 did not initially claim eligibility under this criterion. On appeal, she submits two articles from Japanese magazines and three copies of the Japanese edition of *Artnews* as evidence to satisfy this category. The first article was published in the April 1994 edition of *Nikkei Art*, contains a photograph of one of the petitioner's sculptures and states that the work was displayed in the "Sprout of Arts" exhibition at the Plus Minus Gallery owned by [REDACTED]. The article does not further discuss the petitioner's work, but rather critiques the "random" practice of businesses displaying the work of emerging contemporary artists in their offices. The second article was published in the January 1996 edition of *Korean Culture*. The article is entitled "Memory of Wind: Wood Sculpture by [REDACTED]" and discusses the petitioner, her work and her solo exhibition at the [REDACTED] in Ginza in 1994. The petitioner also submitted the June, July and August 1994 Japanese editions of *Artnews* which contain an advertisement for [REDACTED] that simply includes the petitioner's name in a list of 22 artists represented by the gallery. Advertisements such as this or other paid publicity do not constitute published material about an alien.

Even if the record included evidence that *Korean Culture* is a professional, major trade publication or other major media in Japan, the submitted article about the petitioner would not satisfy this criterion because it was published in 1996, seven years before this petition was filed, and does not demonstrate the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

As evidence of the petitioner's eligibility under this criterion, counsel cites the recommendation letters submitted with the petition and on appeal. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

[REDACTED] in Tokyo, states that the petitioner's work "is highly recognizable. Her work makes the viewer stop in his tracks. She works with wood or stone, often against an outdoor setting or a large indoor background. [REDACTED] has a way of integrating the space in her exhibitions and she has received excellent reviews in Japan. Her work has been selected by the Tokyo Metropolitan Arts Museum on several occasions between 1992 and 1998. This is similar to having one's work at the Museum of

Modern Art in New York. She is truly an exemplary artist who has made a huge contribution to contemporary art." The record does not fully corroborate these statements. The record contains only one review of the petitioner's work from the 1996 edition of *Korean Culture* and the petitioner submitted no documentation from the Tokyo Metropolitan Arts Museum confirming that her work has been collected or exhibited by that institution.

██████████ Associate Professor of ceramics at the ██████████ explains that he has been aware of the petitioner's work since she was a young artist. Professor ██████████ explains that the petitioner "has an ability to develop works that are based in the ancient artistic teachings of the East, while maintaining a modern perspective." Professor ██████████ further states that the petitioner's

sculptures have been part of the contemporary art arena in Japan since the 1990's. In 1995, she was selected to participate in the Lake Naguri International Open-Air Art Exhibition. . . . She integrated the beauty of the lake with the textures of the nearby forest. Her work uses natural elements in an inventive way. She was also selected for an exhibition entitled, Three Asian Artists at the Korean Embassy in Japan in 1994. She is the premiere Korean artist working in Japan. Her sculpture emphasizes her superior skill in carving wood, creating elegant shapes.

██████████ concludes that the petitioner "is one of the most unique and well-respected artists in Japan." The record documents the petitioner's inclusion in the Lake Naguri exhibition, but does not document the display of the petitioner's work at the Korean Embassy in Japan.

██████████ explains that as a Korean artist working in Japan, he is "experientially close to ██████████. We are both Korean nationals who chose Japan as the environment in which we would create for many years." ██████████ further states that the petitioner "has a fresh approach to using natural materials in space. Her work has to be viewed from different angles and she infuses the art world with a keen perception about the environment. ██████████ has contributed to artists in Japan, Korea and the United States and will continue to do so." Yet Mr. ██████████ description of the petitioner's work does not identify any specific, original contributions that she has made to her field.

██████████ in Tokyo, explains that the petitioner "presents her works that were made by natural material such as wood, soil, stone, and recently - cabbages. She mainly displayed her instillation [sic] works between the show room. For example, some planks are curled to make the curved surfaces, some electric light bulbs are put on stones, and the ringed monuments are made from cabbages. These works show us the existence of nature. Her unique images appear as the new shapes in show room, while remaining the original forms [sic]." However, ██████████ does not state that the petitioner's work has substantially impacted other contemporary sculptors, installation artists or art critics in Japan or abroad; or that she has otherwise made original and major contributions to her field.

██████████ Director of the ██████████ states that the petitioner is "one of the elite of the art world in Tokyo." ██████████ also states that the petitioner's work has been "selected" by the Tokyo Metropolitan Arts Museum in 1992, 1993, 1994, 1995 and 1998. As mentioned above, the record contains no corroborative evidence from this museum regarding its collection or display of the petitioner's work. Director ██████████ further explains that the petitioner "has an ability to integrate traditional concepts with modern techniques to arrive at astonishingly tactile works of art. She infuses natural elements with a new veneer and is highly regarded as an extraordinary artist. . . . I can confirm that ██████████ work is appreciated by artists and

art critics internationally.” Yet Director [REDACTED] does not give any examples of critical reviews of the petitioner’s work in Japan or other countries and the record contains only one article about her work from *Korean Culture* magazine.

[REDACTED] an art critic and journalist in Japan, states that the petitioner’s work “has been displayed in exhibitions in Japan, Korea and France. . . . She is one of the most highly regarded contemporary artists. Ms. [REDACTED] work has demonstrated sustained international acclaim in the field. She uses natural material as well as metals and often places her pieces outside in a field or in an outdoor exhibition. . . . No artist produces sculptures with her imaginative flair and sense of connection to the environment. [REDACTED] is clearly an extraordinary artist.” The record documents the petitioner’s exhibition of her work in Japan and Korea, but contains no evidence that her work has been displayed in France.

[REDACTED] and the petitioner’s former teacher at Tama Art University in Tokyo, states that the petitioner’s “artistic style combines an ancient oriental feeling with a contemporary approach in a spiritual way. She creates modern art work in natural materials such as woods in an attempt to connect oriental and western art.” [REDACTED] in New York City, similarly explains that the petitioner’s work “is the result of years of study of traditional Japanese and Korean craftsmanship and sense of aesthetic. The artist’s hand in creating the work is very evident and felt by the viewer and creates proximity between the viewer, piece, and artist. Her works have received critical acclaim in Korea, Japan, and the United States.” Accompanying [REDACTED] letter is a copy of a postcard from the petitioner’s solo exhibition at the Korean American Art Center in October 2003. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Again, the record contains only one article about the petitioner’s work in Japan and she submitted no evidence that her work has been critically acclaimed in the United States.

[REDACTED] in New York City, states that the petitioner’s work “creates a powerful sense of displacement within landscapes. The forms from nature and urban life are calmly reassuring in their beauty, but question and provoke spatially and thematically the viewer’s recognition and perception of their materiality. Her work is highly original and skilled, both in concept and execution. I consider her and [sic] extraordinary artist who’s [sic] work will make significant contribution to art in the United States.” The record includes documentation of the petitioner’s exhibition at NYCoo Gallery in April 2002. [REDACTED] explains that the gallery “exhibits the work of American and International emerging artists,” thus indicating that the petitioner was considered an emerging artist (at least in the United States) at the time her petition was filed. Indeed, [REDACTED] states that NYCoo Gallery will be exhibiting the petitioner’s work again in 2005, suggesting that the petitioner is still considered an emerging artist.

[REDACTED], states that he has known the petitioner for ten years. [REDACTED] explains that the petitioner’s works “are both dynamic in composition and sensitive in taste. Her art works remind as [sic] Oriental images. She always keeps asking himself [sic] ‘relation between herself and nature,’ and ‘relation between realistic and abstract.’ [REDACTED] has accomplished all she can in her native Korea, Japan. Shi [sic] is one of the greatest artist [sic] I have ever met.” [REDACTED] an art journalist and critic based in Tokyo, further explains that the petitioner’s work makes an “important comment on popular culture. She uses images from nature and works them into a landscape situation. Her manipulations of imagery are magnificent in their ability to project social meaning.

██████████ is interested in the environmental dilemma of commercial culture, imposing itself in various situations." Both ██████████ and ██████████ provide perceptive interpretations of the petitioner's work, but they do not state that her work or aesthetic have made original contributions of major significance to her field.

Finally, ██████████ Professor of Art History at ██████████ in Japan, states that the petitioner has "received numerous great reviews. Her works are developing and improving continuously. It has proven of [sic] her ability and energy." ██████████ devotes the rest of his letter to explaining the petitioner's motivations to work in the United States and identifies no original artistic contributions made by the petitioner to her field.

We have examined the numerous exhibition postcards, catalogues, critical reviews, and other evidence submitted to establish the credentials of the authors of these recommendation letters and we acknowledge their expertise in the petitioner's field. However, the record provides little evidence to corroborate their assessments of the petitioner's work and her alleged contributions to contemporary art in Korea, Japan and other countries. As discussed above under the third criterion, the record contains only one critical review of the petitioner's work from *Korean Culture* magazine printed in 1996. The record indicates that the petitioner pursued undergraduate art studies in Korea from 1983 to 1987; graduate studies in Japan from 1993 to 1995, and post-graduate studies in Japan from 1996 to 2002. During this period she won three certificates of merit in exhibitions in Korea and honors from the annual Nika-Ten competition from 1992-1995 in Japan. As further discussed below under the seventh criterion, the record documents just two solo exhibitions and seven group exhibitions of the petitioner's work between 1994 and 2002. On appeal, the petitioner documents her presentation to a class at the Tokyo National University of Fine Arts and Music, but we cannot consider this evidence because it occurred after the petition was filed. Again, the petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. In sum, the evidence indicates that the petitioner gained limited recognition of her work in Korea and Japan and that her work is well regarded by the authors of her recommendation letters. However, these letters mainly describe and interpret the petitioner's work, but do not identify specific, original contributions of major significance that she has made to her field. Accordingly, the petitioner does not meet this criterion.

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

The record documents two solo exhibitions of the petitioner's work. The first exhibition was held in April 1994 at the Morris Gallery in Tokyo. The article printed in 1996 in *Korean Culture* favorably discusses this exhibition, but the record contains no catalogue, brochure or other evidence from the Morris Gallery documenting this show. As discussed above under the fifth criterion, the record includes evidence that the petitioner had a solo exhibition of her work in New York City in 2002 at the NYCoo Gallery, which "exhibits the work of American and International emerging artists," as stated in Keico Watanabe's letter.

In addition to the Nika-Ten Exhibitions and the shows in which the petitioner won certificates of merit in Korea, the record documents the inclusion of the petitioner's work in the following seven group exhibitions: the 1997 Lake Naguri International Open-Air Art Exhibition in Saitama, Japan; the Shibayama International Open-Air Art Exhibition 1997; the 1999 Abiko Open Air Exhibition in Abiko, Japan; "Water, Fire, Earth and Wind," the Korea-Japan Contemporary Art Show at the Pusan National Culture Center in Korea in 1999; "Today, Asia - from Korea" at the Civic Gallery in Yokohama, Japan in 1999; the Vietnam, Thailand, Japan Contemporary Art Exchange Exhibition in Funabashi, Chiba, Japan in 2000; and "What's Your Story?", the Funabashi

Contemporary Art International Exchange Exhibition with the Creative Growth Art Center and Creativity Explored of San Francisco at the Funabashi Civic Gallery in Japan in 2001.

Three of the seven catalogues submitted to document these exhibitions are printed in Japanese and Korean and were submitted without certified English translations of their text as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without translations of these catalogues or other evidence regarding the significance of these shows, we cannot determine whether the petitioner's inclusion in these exhibitions reflects the requisite sustained acclaim. The remaining four catalogues contain English translations of their text, but do not indicate that the exhibitions were highly selective. For example, the catalogue for the 1997 Lake Naguri International Open-Air Art Exhibition states, "We have received more than 100 entries. Some participants are those who are familiar to us, and there were new artists in addition to amateurs, without whose promising entry such an exhibition could not happen at all." The catalogue includes photographs of over 100 works, thus indicating that all artists who applied were included in the exhibition. The record contains no critical reviews, media coverage or other evidence that the petitioner's work in these exhibitions was significantly recognized in her field.

The petitioner's resume submitted on appeal lists 29 other exhibitions, of which she submitted no corroborative evidence. Simply going on record without supporting documentary evidence is not sufficient to meet 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's resume also states that the Nika-Ten Exhibitions were held at the Tokyo Metropolitan Arts Museum, but the record contains no documentation from these exhibitions or this museum to verify this statement.

On appeal, the petitioner also submits evidence of her solo exhibition at the Korean American Art Center in New York City, which we cannot consider because it occurred after the petition was filed. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. In sum, the record shows that the petitioner displayed her work in two solo and seven group exhibitions between 1994 and 2002. Yet the evidence does not establish that her work was exhibited in a manner consistent with the requisite sustained acclaim. Accordingly, she does not meet this criterion.

(ix) *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 did not initially claim eligibility under this criterion. On appeal, she submits evidence that she has sold three of her sculptures to three individuals in Japan and Korea for prices between \$3,500 and \$9,400 between 2001 and 2002. However, the record contains no evidence of the prices paid for the work of other contemporary sculptors in Japan and Korea during this time period. The record thus does not establish that the petitioner's work was sold at prices significantly higher than those of other contemporary sculptors in Japan and Korea or comparable to the prices paid for the work of such artists at the very top of their field. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is a successful artist whose work is well regarded by several artists, gallery directors and art critics in Japan. However, the record does not establish that the petitioner had achieved sustained national or international acclaim as an artist placing her at the very top of her field at the time of filing.

She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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.