



U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 03 093 50917

Office: VERMONT SERVICE CENTER

Date: **SEP 30 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.

Mari Johnson

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 as a painter. The petitioner initially submitted supporting evidence of his membership in artistic associations, his awards and prizes, one published and two personal albums of his paintings, five recommendation letters, Chinese newspaper articles, photographs of exhibitions of his work, his personal bank account statements, property titles for land owned by the petitioner in China, and a letter from a prospective employer in the United States. On appeal, the petitioner submits additional evidence, most of which cannot be considered 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). 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 record includes copies of the following certificates: 1) an "Honor Certificate of Gold Award" presented to the petitioner at the World Chinese Art Exhibition in 2000 for his work, "Far Away," and conferring upon him the honorary title of "World Outstanding Chinese Artist;" 2) a silver prize awarded to the petitioner at the Third International Golden Swan Art Competition in "October, 1999 new work [sic], U.S.A.;" 3) an attestation to the petitioner's inclusion in the "Dictionary of World Painting and Calligraphy Artists" and honorary title of "Contemporary Painting and Calligraphy Eminent Artist" by the Canada World Painting and Calligraphy Association and the Editorial Committee of the Dictionary in 1998; 4) a Gold Award Certificate from the National Shu-Au-Xian Grand Exhibition dated May 1, 1995; 5) verification that one of the petitioner's oil paintings was selected by the China Association of Artists in 1994 for the Eighteenth Nikkiten International Art Exhibition jointly sponsored by the Tokyo Art Museum and the Japan Nikkikai Art Association; 6) a silver award in oil painting from this exhibition dated 1994; 7) a certificate attesting to the China Tianjin Museum's collection of the petitioner's work, "Big Panda" in 1993; 8) a Technique Innovation Award for the petitioner's oil painting, "Tarnished Home," exhibited at the China Contemporary Young Artist Masterpieces Exhibition in 1993; 9) an "Excellent Pieces" award from the 59th International Painting Exhibition in Honor of the 30th Anniversary of the Founding of the Association of International Contemporary Fine Artists in Japan in 1992; 10) a Gold Award for the petitioner's work "Cavalier's Honor" from the China National Institute for Movie and Television Art in 1992; 11) a collection certificate for the petitioner's work, "The Love of Miao Fortress" from the Guangzhou Art College (the petitioner's alma mater) in 1989; and 12) two silver awards from the Guangdong Major Thirteen Cities Movie Pictorial Playbill Excellent Works Exhibition in 1987. On appeal, the petitioner submits evidence of two additional honors from exhibitions in the United States. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

Apart from the award certificates themselves, the petitioner submitted no evidence regarding the significance of his honors in China from which we could assess whether or not the certificates demonstrate, reflect or are consistent with sustained national or international acclaim. The only supplementary evidence submitted is an article from an unidentified Chinese newspaper listing the "Awarded Works of the First Guangdong Movie Pictorial Playbill Exhibition in 1987." The article includes a photograph of one of the petitioner's award-winning movie posters and the petitioner is listed along with eight other silver awardees. The record does not show that this article was printed in a nationally circulated newspaper or any other evidence that the petitioner's awards gained national recognition outside of Guangdong province. Moreover, these awards were won in 1987, fifteen years before this petition was filed, and do not reflect the requisite sustained acclaim.

On appeal, counsel states that the first award listed above "is one of the highest national awards for a Chinese artist, a national and lifetime honor for a painting artist in China," yet he submits no evidence to support this statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel makes similarly unsupported statements

regarding the significance of the petitioner's fifth certificate listed above. Although the evidence indicates that the petitioner won honors for his work in numerous exhibitions, the certificates alone do not establish the national or international recognition of those honors and we consequently cannot determine whether or not the petitioner's certificates reflect the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(ii) 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.

The petitioner submitted evidence of his membership in the Oil Painters of America (OPA), the China Association of Artists, and the World Association of Beauty Culture. A submitted "Letter of History" of the OPA states that "[a]ll artists working in the oil medium" are eligible for OPA membership. On appeal, counsel states that the China Association of Artists "is the most authoritative and prestigious artist association. The members are strictly selected from the top experts in each art field in China." Counsel repeats this description of the Association nearly verbatim from four Chinese newspaper articles that announce the petitioner's exhibition in Flushing, New York in 2002. Yet the record does not include the Association's membership criteria or other primary evidence to support its alleged prestige and selectivity. Finally, a document concerning the World Association of Beauty Culture is printed in Chinese and was not submitted with a certified English translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). The record thus does not demonstrate that outstanding achievements are prerequisite to membership in the OPA, the China Association of Artists or the World Association of Beauty Culture. Accordingly, the petitioner does not meet this criterion.

On appeal, the petitioner submits documentation of his membership in two watercolor painting societies in the United States, but we cannot consider this evidence because it arose 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), *Matter of Katigbak*, 14 I&N Dec. at 49.

(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 record contains a 30-page booklet entitled "Luo Zhen Album of Paintings" that was published by the World Culture Union Press in New York in 2002. The album includes an introduction, short biography of the petitioner, and photographs of 30 of his paintings. The back cover of the album states, "Printing Number: 1 – 3,000 copies," but the petitioner submitted no evidence concerning the sale or distribution of the booklet. In addition, the record contains no evidence regarding the World Culture Union Press and its publishing criteria.

The petitioner also submitted four articles printed in four Chinese newspapers from the New York Metropolitan region between September 18 and 21, 2002. The articles announce the petitioner's solo exhibition in Flushing, New York and briefly discuss his work. However, the record is devoid of any evidence that these newspapers are nationally circulated or otherwise constitute major media. Moreover, publications in a language that the majority of the U.S. population does not speak rarely evidence national acclaim in the United States.

On appeal, the petitioner submits three additional newspaper articles that we cannot consider because they were published 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), *Katigbak*, 14 I&N Dec. at 49.

The record does not establish that the petitioner's album is a professional publication consistent with the requisite sustained acclaim. The record also does not demonstrate that the four newspaper articles from 2002 were printed in major media. 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.

The petitioner submitted eight recommendation letters from individuals who are familiar with his work. 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.

Associate Dean and Curator of the Oriental Art Collection at Saint John's University in Jamaica, New York, states that the petitioner "is undoubtedly a versatile artist and his potential may be sufficient to become a prominent world-class artist in the future." Yet also rates the petitioner as among "the top one percent of the outstanding painters I have ever met in past decade [sic] in the United States." explains that in the petitioner's work "we can see tremendous Western art theme as well as his subtle taste of color echoes the oriental melancholy elevated [sic] his work to a level of global taste. This is really extraordinary and amazing! With his ample talent he still has tremendous space to go much further." also notes that the petitioner earned the title of "King of Panda Painting" in China.

Owner of the L.J. Wender Gallery of Fine Chinese Paintings in New York City, explains that he intends to invite the petitioner to exhibit his paintings at his gallery in the future. states that the petitioner is "a master painter in the field of Oil [sic] painting and watercolor, especially in the painting of the Chinese national treasure – pandas." further explains that the petitioner "integrated the western techniques into his Chinese painting and created a new form objects [sic] in both scenery and animals which immediately earned tremendous recognition from peers."

President of the World Association of Beauty Culture (of which the petitioner is a member), explains that the petitioner "successfully combined the strengths of Chinese paintings with that of Western paintings, i.e. the combination of the brush lines of Chinese paintings and the dimensions of Western's [sic] realistic moulding and focus perspective paintings. He created his own style and school of paintings. He was widely acclaimed and recognized by his peers in the field around the world." also states that the petitioner is recognized as the "Chinese Master Painter of Pandas."

President of the World Arts Center of which the petitioner is a member, explains that the petitioner "created his unique skills to paint pandas on the basis of traditional Chinese painting along with the in-depth influence of the Western Realism [sic]. In this way, he formed his own unique art style and fully recognized [sic] by his colleagues and peers." Yet repeats nearly verbatim two sentences from Dean

Ho's letter: "[The petitioner] is undoubtedly a versatile artist and his potential definitely will be sufficient to become a prominent world-class artist in the future. . . . With his ample talents he still has tremendous space to go much further."

Chief Executive Officer of ArtXchange, an art promoter and website which represents the petitioner, states that the petitioner's style "simplifies the best features of traditional Chinese painting combined with Western technique. The combination creates images that are truly unique." A letter from China International Books and Pictures Research College in China also attests to the petitioner's unique style and affirms that he "has been honored as Panda Master in China." The College explains that the petitioner "painted pandas with the sense of conservation of environment, besides his extraordinary skills in oil painting and watercolor." Similar praise is found in the letters of a former Professor at the Guangzhou College of Art when the petitioner was a student at the College, and an Associate Research Fellow of the Tianjin Municipal Commission of Science and Technology who is in charge of authenticating objects displayed at the Tianjin Museum, which collected one of the petitioner's paintings.

On appeal, counsel contends that the petitioner meets this criterion because "[d]ue to [his] ever-lasting and recent outstanding achievements in painting, he has won plenty amount [sic] of recommendation, recognition and admiration from top scholars and artists in the field." To support this claim, counsel cites a second letter from submitted on appeal. In this letter, changes his assessment of the petitioner due to his recent exhibitions in the United States. We cannot consider revised assessment of the petitioner's work because it is based on exhibitions that took place after the petition was filed. Again, 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), *Katigbak*, 14 I&N Dec. at 49.

The record does not persuasively document that the petitioner's painting style or his panda paintings, as described in his recommendation letters, have been recognized as original contributions of major significance to his field. As discussed above under the first criterion, the record does not document the significance of the petitioner's award certificates from China or otherwise demonstrate that these certificates reflect the requisite sustained acclaim. Moreover, only one of the certificates attests to the originality of the petitioner's work: the Technique Innovation Award for the petitioner's oil painting, "Tarnished Home," exhibited at the China Contemporary Young Artist Masterpieces Exhibition in 1993. Yet this award was presented to the petitioner nearly a decade before his petition was filed and does not demonstrate sustained acclaim for his innovative technique. In addition, as discussed under the third criterion, the record contains only regional newspaper articles about the petitioner's work and only one published album of his paintings, the significance and distribution of which has not been established. Finally, as further discussed below under the seventh criterion, the record does not establish that the petitioner's work has been shown in major national or international exhibitions consistent with the requisite sustained acclaim. 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 petitioner submitted evidence that his work has been shown in China, Japan and the United States, but the record does not fully document the significance of the exhibitions in which he has participated. As discussed under the first criterion, apart from the certificates presented to the petitioner at various exhibitions, the record does not document the significance of those exhibitions. Three certificates evidence the petitioner's participation in the World Chinese Art Exhibition in 2000, the National Shu-Au-Xian Grand Exhibition in 1995,

and the China Contemporary Young Artist Masterpieces Exhibition in 1993, but the record does not document the venue, scope and selection criteria for these exhibitions or otherwise document their significance. Three certificates attest to the petitioner's participation in the Eighteenth Nikkiten International Art Exhibition in Japan in 1994 and the 59th International Painting Exhibition in Honor of the 30th Anniversary of the Founding of the Association of International Contemporary Fine Artists in Japan, but the record does not further identify the venues or significance of these exhibitions. Two certificates show that the petitioner's work has been collected by the China Tianjin Museum in 1993 and the Guangzhou Art College in 1989, but the record contains no evidence that these collections have any prominence in China outside of the Tianjin and Guangzhou metropolitan regions. Although the petitioner won silver awards at the First Guangdong Movie Pictorial Playbill Exhibition in 1987, the record does not identify the venue of this exhibition or demonstrate that it received recognition beyond Guangdong province. The petitioner also submitted photographs identified as his "Solo Show at Lima, Peru, July 1998," but the record does not further identify the venue or document the significance of this exhibition.

One certificate attests to the petitioner's silver prize at the Third International Golden Swan Art Competition in New York in 1999, but again, the record does not document the venue, selection criteria, scope or significance of this exhibition. Ten photographs and the four Chinese newspaper articles discussed under the third criterion document the petitioner's exhibition in Flushing, New York in 2002. Yet the record does not identify the venue of this exhibition or establish that the show was acknowledged outside of the Chinese-American community in the New York metropolitan region. On appeal, the petitioner submits evidence of his participation at four other exhibitions in the United States, but 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), *Katigbak*, 14 I&N Dec. at 49. In sum, the relevant evidence does not indicate that the petitioner's work has been exhibited in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner 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 claims that he is a "millionaire painter in modern China." As evidence of his high income, he submits his account statement from HSBC bank of \$38,700 and his saving certificate from China Construction Bank for 1,800,000 *yuan* (*ren min bi*). The petitioner claims that his income comes primarily from the sale of his paintings, but submits no sales contracts, receipts or other evidence to support this claim. 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)). An "Evaluation Certification [sic] of Famous Modern Chinese Painters and Calligraphers" states that the "experts group of the Editing Committee of the Collection of the Sino Calligraphers and Painters Over the World" appraised the price of the petitioner's calligraphy to be 918 *yuan* per square foot and the price of his paintings to be 1,800 *yuan* per square foot in 1999. Yet the record contains no evidence that the petitioner has sold his work at these prices or that such prices are significantly high in the petitioner's field.

The petitioner also submitted copies of two titles to land that he owns in Guangdong, China, but the documents do not establish that he purchased the property with the proceeds from the sale of his paintings. The petitioner also claims that his income greatly exceeds the "average wage for an employee" in China of 30,000 *yuan*. The

relevant comparison in this case is not the average wage of all workers in China, but the income of artistic painters in China. The petitioner may be considered wealthy in China, but the record does not establish that his income is significantly higher than that of other painters or comparable to painters at the very top of his field in China. 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 record in this case does not establish that the petitioner has achieved sustained national or international acclaim as an artist placing him at the very top of his field. He 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 his 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.