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FILE:

EAC 05 050 50105

Office: VERMONT SERVICE CENTER

Date: AUG 02 2006

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.

3 Robert P. Wiemann, Chief
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 (AAO) on appeal. The appeal will be dismissed with a finding of fraud.

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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On April 13, 2006, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he misrepresented the biographical history and achievements of another individual as his own.

The AAO's April 13, 2006 notice stated:

On appeal, you submitted a letter dated October 11, 2005 stating:

I am a self-taught folk artist; I have been passionate about Chinese art since childhood. Unlike most Chinese folk artists who either have a strong family tradition or have sought apprenticeship from certain folk art masters, I mainly learnt the trade from fellow folk artists when I set up a Chinese arts and crafts workshop in 1992 in my home town. In order to fully understand Chinese ancient art style, in the late 80s, I spent about seven months on the Chinese section of the Silk Road, visiting many cities, historic sites, taking photos and making sketches. In the process I made friends with hundreds of folk artist from different parts of China, folk art researchers and professors from Beijing, Shanghai, Hangzhou, and Xi'an.. [sic] After years of preparation, he [sic] was able to visualize the form and broad theme the jade carving would take under the invaluable help of my "academic advisors" who provide vital historic materials and making corrections to the details of my hand drawings of my jade sculpture.

Astonishingly, the above statements in your October 11, 2005 letter are identical in content to those found in an October 3, 2005 letter submitted by another alien who resides at your address of record. In your duplicative letters, both of you misrepresent the biographical history and achievements of Wang Yinhua, a folk artist from Xianju, China, as your own. The above text was plagiarized from a March 19, 2003 article entitled "Sculpture Carves out a Bit of History" appearing in *China Daily* (accessed at <http://www.china.org.cn/english/culture/58758.htm> on April 10, 2006). This article, which discusses the jade carving experience of Wang Yinhua, rather than your own experience, contains the following original statements which you have plagiarized:

A self-taught folk artist, Wang said he has been passionate about Chinese art since childhood, but it was not until 1992 that he was able to devote all his attention to it.

* * *

“Unlike most Chinese folk artists who either have a strong family tradition or have sought apprenticeship from certain folk art masters, I mainly learnt the trade from fellow folk artists when I set up a Chinese arts and crafts workshop in 1992 in my home town,” explained Wang.

In 1984, after leaving the army, he spent about seven months on the Chinese section of the Silk Road, visiting many cities, historic sites, taking photos and making sketches.

* * *

In the process Wang made friends with hundreds of folk artists from different parts of China, folk art researchers and professors from Beijing, Shanghai, Hangzhou and Xi’an.

* * *

After years of preparation, in 1997, Wang set in motion the actual creation of the huge, carved jade screen. Having secured adequate funding . . . he was able to visualize the form and broad theme the jade carving would take.

Throughout Wang maintained frequent contact with his “academic advisors” who lent invaluable help to his production team, by providing vital historic materials and making corrections to the details of his hand drawings

Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above derogatory information indicates that you have misrepresented the history and accomplishments of Wang Yinhua as your own.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was also requested to submit the original versions of fifteen photocopied documents submitted with the petition. In accordance with the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded twelve weeks in which to respond to the AAO’s notice.

The petitioner failed to respond to the AAO’s notice. Regarding the petitioner’s failure to submit the requested original documents, the regulation at 8 C.F.R. § 103.2(b)(5) provides: “If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked.”

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By filing the instant petition and misrepresenting the history and accomplishments of Wang Yinhua as his own, the petitioner has sought to procure a benefit provided under the Act by willfully misrepresenting material facts. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he misrepresented the accomplishments of Wang Yinhua, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. As stated above, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho* at 582, 591-92. The remaining documentation and the director's bases of denial will be discussed below.

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 December 9, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a jade sculpture artist and 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 1996. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than eight years), it is reasonable to expect him 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 photocopies of the following:

1. Certificate from the China Artists' Association naming the petitioner an "Honorary Member" (July 1993)
2. Certificate stating that the petitioner's artwork "Moon Light" won the Outstanding Award at the "Cultural Art Brilliant Works Exhibition" (November 1990)
3. Certificate from the Cultural Department of Shandong Province stating that the petitioner received "the Best On-the-spot Jade Sculpting Performance Award" at the "Fifth Annual Around Art Exhibition" (December 1993)
4. Certificate conferring the petitioner with the title of "Chinese Jade Sculpting Master of This Generation" (June 21, 1993)
5. Certificate of Encouragement acknowledging the petitioner's participation in the 2nd Tianjin Art Festival (October 1990)
6. Certificate conferring the petitioner with the title of "The Famous Artist of China" (August 1993)
7. Certificate conferring the petitioner with the title of "Hebei Folk Artist Expert" (July 1991)
8. Certificate stating that the petitioner received the 1st Place Award at the 2nd Annual Folk Art Exhibition of Tianjin City (July 1995)
9. "Honor Certificate" from the Cultural Bureau of Shenyang City stating that the petitioner's jade sculpture "received the title of Outstanding Exhibition Work" (August 1992)
10. "Honor Certificate" stating that the petitioner's jade sculpture received the Excellence Award at the Kaifeng Art Exhibition (November 1990)
11. Certificate issued in English stating: "IN RECOGNITION OF YOUR OUTSTANDING ACHIEVEMENTS IN THE PRESERVATION, CREATION AND SPREAD OF FOLKLORE CULTURE, WE CONFER ON YOU THE TITLE OF INDUSTRIAL FOLK ART . . . THE INTERNATIONAL ORGANIZATION OF FLOK [sic] ART"

In response to the director's request for evidence, the petitioner submitted an untitled document about the "Shandong Province fifth session of art tour" which appears to relate to item 3 above.¹ 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 and the document relating to item 3 were not certified as required by the regulation.

In regard to items 3, 5, 7, 8, 9, and 10, we find that these awards reflect local or provincial recognition rather than national or international recognition.

In regard to items 1 through 11, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. The record includes no evidence that would demonstrate the number of awards given, the geographic area from which the individuals eligible for consideration for these awards were drawn from, the criteria for granting these awards, the level of expertise of those considered, and the number of individuals eligible to compete. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence showing that the certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. In this case, there is no supporting documentation from the awarding entities or the print media to establish that the petitioner's awards are nationally or internationally recognized awards.

In addition to the above deficiencies, the record includes no evidence showing that the petitioner has received any awards subsequent to 1995. The absence of awards during the last decade indicates that the petitioner's acclaim has not been sustained.

On April 13, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original versions of the eleven certificates listed above. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

The petitioner has not established that he meets this criterion.

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

¹ The source of this document is unknown. The document includes no address, phone number, or any other information through which its author may be contacted.

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 certificate from the China Artists' Association naming him an "Honorary Member" and a "Membership Certificate" from the Educational Bureau of China.

On appeal, the petitioner submits what is alleged to be a 1995 "second quarter membership list" from the Chinese Folk Artist Association (which includes his name). This document includes no address, phone number, or any other information through which this association may be contacted in order to verify the validity of the petitioner's individual membership status. Further, the English language translation accompanying this document was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

In this case, the record includes no evidence of the membership bylaws or the official admission requirements for China Artists' Association, the Educational Bureau of China, or the Chinese Folk Artist Association. There is no evidence showing that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

On April 13, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original versions of his membership certificates for the aforementioned associations. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

The petitioner has not established that he meets this criterion.

Published materials 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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted an article about himself allegedly published in *Tianjin People Night Daily*. We note that the date of this article was not provided as required by this criterion. Interestingly, none of the awards mentioned in this article were included among the evidence submitted by the petitioner under the first criterion. Nevertheless, there is no evidence showing that the publication in which this article appeared qualifies as major media. Further, the English language translation accompanying the article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). An aggregate of one article in the decade prior to this petition's filing date is not adequate to demonstrate that the petitioner has earned sustained national or international acclaim in major media.

On April 13, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original version of the article allegedly published in *Tianjin People Night Daily*. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

The petitioner has not established that he meets this criterion.

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 an article that he allegedly published in *Art Window Magazine* in June 1992. The English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, there is no evidence of the field's reaction to this article, nor any indication that it is widely viewed as significantly influential. Furthermore, there is no evidence showing that the publication featuring the petitioner's article had substantial national or international readership.

On April 13, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original version of the article allegedly published in *Art Window Magazine*. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

The petitioner has not established that he meets this criterion.

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

The petitioner submitted six photographic images of what are alleged to be his artistic creations. Without further evidence, it cannot be determined if the petitioner's works are among those shown. The images of the petitioner's creations were not accompanied by contemporaneous evidence (such as an event program or art brochure) indicating the specific exhibition or showcase in which they appeared.

It must be stressed that an artist does not satisfy this criterion simply by arranging for his or her work to be displayed or sold. We find no evidence demonstrating that the petitioner's creations 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. Further, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his work alone. The petitioner has not established that he meets this criterion.

We concur with the director's finding that the petitioner has failed to demonstrate that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

The petitioner's appeal was filed on October 17, 2005. The appellate submission was accompanied by supporting evidence (which has been addressed in this decision). On the Form I-290B, Notice of Appeal to the AAO, however, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than nine months later, the AAO has received nothing further.

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 the 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 record includes no such evidence.

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 with a finding of fraud.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted a document containing false statements in an effort to mislead CIS and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States.