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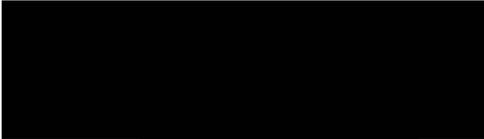


U.S. Citizenship
and Immigration
Services

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DEC 15 2006



FILE:

EAC 05 067 50024

Office: VERMONT SERVICE CENTER

Date:

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.

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.

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.

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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 27, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a fashion designer. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since November 17, 2000. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than four 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 as a fashion designer in this country.

In a December 22, 2004 letter accompanying the petition, the petitioner states: "I am applying for adjustment of status in the U.S. based on my extraordinary ability in fashion design My training in fashion design is well accomplished, because in 1981 I graduated from Chengdu Garment Corporation Affiliated Technical College. . . . I had received formal vocational education at college level."

The petitioner's initial submission included a "Certificate for Professional Credentials" issued by the Labor and Social Security Ministry of the People's Republic of China contradicting his assertions. According to the "Certificate for Professional Credentials" issued on March 20, 2001, the petitioner's "Education Level" is "Senior Middle School" (rather than college graduate) and his "Type of Work" is "Chinese Cooking Chef."

In response to the director's request for evidence, the petitioner submitted further conflicting evidence. The petitioner submitted a June 2, 1992 "Certificate of Vocational Qualification" issued by the Department of Labor and Social Security of the People's Republic of China contradicting the March 20, 2001 "Certificate for Professional Credentials." According to the "Certificate of Vocational Qualification" issued on June 2, 1992, the petitioner's education level is "College" rather than "Senior Middle School" as indicated in the March 20, 2001 "Certificate for Professional Credentials."

The petitioner's response also included a July 1, 1976 Certificate of Graduation from the "Fifteenth High School of Chengdu City" and a December 25, 1982 Certificate of Graduation from the "Academic Enhancement College of Chengdu City." In his December 22, 2004 letter, however, the petitioner stated that he graduated from the "Chengdu Garment Corporation Affiliated Technical College" in "1981." Further, the "Certificate for Professional Credentials" issued on March 20, 2001 indicated that the petitioner's "Education Level" was only "Senior Middle School" contradicting the July 1, 1976 and December 25, 1982 Certificates of Graduation.

The petitioner has not resolved the aforementioned discrepancies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In an April 6, 2005 request for evidence notice issued by the director, the petitioner was specifically instructed to submit "evidence of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor."

In response to the director's request for evidence, the petitioner submitted a certificate issued by the "Textile Bureau of Chengdu City" stating that he "was awarded a Magnificence Cup First Grade Prize of Apparel Design in Chengdu City" in 1984. The petitioner also submitted a certificate stating that he "was awarded 'Flying Apsaras' Cup Special Grade Prize of Apparel Design in Sichuan Province" in 1987. The petitioner's response also included a Certificate of Prize stating issued by the "Apparel Design Institute of Sichuan Province" stating that he "was awarded First Grade Prize of Excellent Apparel Design in 1990." The preceding awards, however, reflect local or provincial recognition rather than national or international recognition.

On appeal, the petitioner submits a Certificate of Prize stating that he was awarded a "No. 1 professional trainers' prize in 1994" from the Educational Ministry of the People's Republic of China. The petitioner also submits a Certificate of Honor issued by the Cultural Ministry of the People's Republic of China stating that he was awarded a "Special Grade prize in 1998 for his outstanding contribution in designing Sichuan Opera apparel." The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit these awards in response to the director's April 6, 2005 request for evidence and now submits them on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.*

In this case, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. Nor is there evidence that would demonstrate the number of awards given, 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 awards presented under this criterion enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or print media to establish that the petitioner's awards are nationally or internationally recognized awards.

In addition to the aforementioned deficiencies, there is no evidence showing that the petitioner has received any prizes or awards since 1998. The absence of such evidence indicates that the petitioner has not sustained whatever acclaim he may have earned while in China.

In light of the above, 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

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 what is alleged to be his certificate of membership (issued on July 1, 1995) for the Sichuan Provincial Society of Textile Engineering (SPSTE). There is no evidence showing the duration of petitioner's membership or whether he remained active in this association in recent years. Further, the record does not include the membership bylaws or the official admission requirements for the SPSTE. There is no indication that admission to membership in this society required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

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

In response to the director's request for evidence, the petitioner submitted letters of support from his customers and individuals with whom he has worked. The appellate submission includes an April 5, 2006 letter from [REDACTED] a fashion designer with whom the petitioner has consulted. These individuals state that they admire the petitioner for his skill and experience as a tailor and fashion designer, but their observations are not sufficient to demonstrate that he is widely recognized throughout his field for an original contribution of major significance. The letters of support provide no specific information regarding how the petitioner's contributions have influenced the fashion industry at the national or international level. Pursuant to section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the classification sought requires documentary evidence of sustained national or international acclaim, and the petitioner cannot arbitrarily replace such evidence with attestations limited to his immediate acquaintances from China and the United States, who assert that he has "excellent designs" and that his work is "highly praised." Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed at the national or international level, we cannot conclude 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.

In response to the director's request for evidence, the petitioner submitted what are alleged to be scholarly articles written by him entitled "An Analysis on the Development Trend and Market of Sewing Thread" and "On Apparel in 21st Century." Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to 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 articles were not certified as required by the regulation. Further, the record includes no evidence showing that these articles were published in "professional or major trade publications or other major media." Nor is there is evidence of the field's reaction to the petitioner's articles, or any indication that they are widely viewed as significantly influential. For

example, the record includes no citation indices showing that the petitioner's articles were frequently cited by others in his field.¹ Thus, 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.

Although the petitioner claims to be a fashion designer, the record includes no evidence showing that his work has been displayed at nationally or internationally recognized fashion shows. Thus, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. Further, the record does not establish that whatever acclaim the petitioner had in China during the 1990's has been sustained subsequent to his entry into the United States in 2000. There is no evidence showing that the petitioner has sustained national acclaim as a fashion designer in this country.

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.

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.

¹ Frequent citation by independent researchers would demonstrate widespread interest in, and reliance on, the petitioner's work. If, on the other hand, there are few or no citations of his work, suggesting that that work has gone largely unnoticed by the greater research community, then it is reasonable to conclude that his articles are not nationally or internationally acclaimed.