



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 06 014 50151

Office: VERMONT SERVICE CENTER

Date: DEC 18 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.

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 September 30, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an art craft artist and a director. 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 March 28, 1999. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than six 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 an artist 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, 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.

The petitioner submitted the following:

1. Certificate issued by the Chinese National Labor Union stating that the petitioner was awarded the title of "National Outstanding Individual" (October 1995)
2. Certificate issued by the Chinese Artists' Association stating that the petitioner was awarded the title of "Outstanding Individual" (May 20, 1998)
3. Honor Certificate stating that the petitioner's artwork "Mandarin Duck Play the Water" won the "Outstanding Award" at the "1994 Shanxi Culture Festival" (August 1994)
4. Certificate issued by the "Bureau of Culture of Hebei Province" stating that the petitioner's artwork "Dragonfly" was awarded the title of "Excellent Art Work" (October 22, 1993)
5. Certificate stating that the petitioner's kite "Butterfly" won the Golden Award at the "Anniversary of National Day of Shanxi Province" (September 1990)
6. Certificate issued by the "State Department" of China stating that the petitioner received a special government allowance (October 1, 1992)
7. Honor Certificate stating that the petitioner's artwork "Flower and Bird" won the Golden Award at the "1994 Xihun Exhibition of Hanzhou Province – Fifth Chinese Industrial Fine Artists' Collection Exhibition" (1994)
8. Certificate stating that the petitioner's artwork "Moon Light" won the "Outstanding Award" at the "Excellent Industrial Arts Exhibition" (November 1995)
9. Certificate issued by the Chinese Artists' Association stating that the petitioner was awarded the title of "Outstanding Individual" (May 20, 1998)

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 award certificates were not certified as required by the regulation.

In regard to items 3, 4, 5, and 7, we find that these awards reflect provincial recognition rather than national or international recognition.

In regard to items 1 through 9, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. Further, the record includes no evidence that would demonstrate the number of recipients, the criteria for granting the 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 preceding awards are nationally or internationally recognized.

In addition to the preceding deficiencies, the record includes no evidence showing that the petitioner has won any significant awards in China or the United States subsequent to 1998. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned in China during the 1990's.

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.

In response to the director's December 30, 2005 notice of intent to deny, the petitioner submitted what is alleged to be his membership certificate (issued in August 1996) for the Chinese Artists' Association. There is no evidence showing the duration of petitioner's membership or whether he remained active in this association in recent years. The petitioner also submitted documents entitled "The Chinese Artist Association Introduction" and "Chinese Artist Association Regulation." We cannot accept these documents as evidence, however, because the English language translations accompanying them were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the source of these documents has not been properly identified. There is no evidence showing that admission to membership in the Chinese Artists' Association 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 display of the alien's work in the field at artistic exhibitions or showcases.

Although the petitioner claims to be an artist, the record includes no photographic evidence of his artwork on display at artistic exhibitions or showcases. In this case, there is no evidence demonstrating that the petitioner's

works have been displayed at significant national or international venues. Nor is there any indication that the petitioner's works have been featured along side those of artists who have 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 artwork alone.

In light of the above, the petitioner has not established that he meets this criterion.

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 submitted a certificate issued by the "State Department" of China (dated October 1, 1992) stating that he received a special government allowance. The petitioner's certificate, however, does not indicate the amount of his government allowance. Further, the record includes no official financial documentation (such as payroll records or income tax forms) showing the petitioner's actual earnings for any given period of time. The plain wording of this criterion requires the petitioner to submit evidence of high remuneration "in relation to others in the field." In this case, there is no evidence showing that the petitioner has earned a level of compensation significantly higher than that of others in his field. Nor is there any indication that the petitioner earns a level of compensation that places him among the highest paid artists in the United States or China. Thus, the petitioner has not established that he meets this criterion.

In conclusion, we find that 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 acclaim necessary to qualify as an alien of extraordinary ability. Further, the record does not establish that whatever acclaim the petitioner had in China has been sustained since his entry into the United States in 1999.

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).



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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.