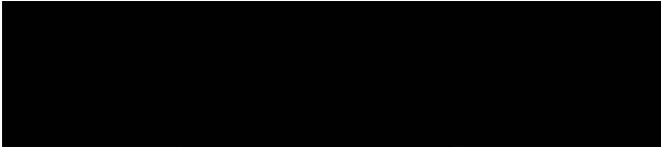




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



B2

FILE: [Redacted]  
EAC 06 009 51767

Office: VERMONT SERVICE CENTER

Date: DEC 27 2006

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:

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.

Σ 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 a painter, teacher, and photographer. 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 14, 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, 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 stating that the petitioner's artwork "Scenery Traditional Chinese Painting" won first prize at the "Kiafen Excellent Folk Fine Art Exhibition" (November 1990)
2. Certificate acknowledging the petitioner's "contribution in the second session of Henan Art Festival 'Henan Folk Art Exhibition'" (October 1990)
3. Fill-in-the-blank "Certificate of Award" stating that the petitioner's artwork won "1<sup>st</sup> prize at the 1<sup>st</sup> International Popular Science Fine Arts, Calligraphy and Photography Contest" (undated)
4. Certificate issued by the Chinese Portrait Photography Association stating that the petitioner was awarded the title of "Master of Chinese Portrait Photography" (1992)
5. Certificate issued by the Chinese Photographers' Works Collection Committee stating that the petitioner was awarded the title of "Chinese Outstanding Photographer" (1991)
6. Fill-in-the-blank certificate issued by the "Bureau of Chinese Culture Department" stating that the petitioner's artwork "Flower and Bird" was selected for inclusion in the "Eighth National Fine Art Exhibit" (1994)
7. Certificate issued by the "Culture Bureau of Anhui Province" that the petitioner's artwork "Sense of Sea" won a first place award at the "Fine Arts, Calligraphic Works and Photography of Social Culture System Exhibit of Anhui Province" (December 1995)
8. Certificate stating that the petitioner's artwork "The Spring of the Peony" won a first place award at the "Second Session of Industrial Arts Exhibition" (September 1993)
9. Honor Certificate stating that the petitioner's artwork won the Golden Award at the "Ninth Nation Painting Exhibition" (1992)
10. Honor Certificate issued by the "Cultural Bureau of Anhui Province" stating that the petitioner's artwork "The Taste" won a third place award at the "New Century, New Work' Fine Art and Photographic Work Competition of Anhui" (1991)
11. Certificate stating that the petitioner won second prize in the "Fine Arts, Calligraphy and Photography Contest of Anhui Province" (August 1994)
12. Certificate issued by the "State Department of China" stating that the petitioner received a special government allowance (1992)
13. Photograph showing various trophies and award certificates (text and inscriptions illegible)

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 1, 2, 7, 10, and 11, we find that these awards reflect local or provincial recognition rather than national or international recognition.

In regard to items 1 through 13, 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 1995. 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.

On appeal, the petitioner states that he is a member of the "Fine Artists' Association of China" and the "Jilin Fine Artists' Association." The record, however, includes no evidence of the petitioner's membership credentials for these associations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)).

In response to the director's notice of intent to deny, the petitioner 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, nor is there evidence demonstrating that the Fine Artists' Association of China and the Chinese Artist Association are one in the same.

In this case, the petitioner has offered no evidence showing that he holds membership in an association requiring outstanding achievement of its individual members, as judged by recognized experts at the national or international level. 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.*

The petitioner submitted several images of what are alleged to be his artistic creations. Without further evidence, it has not established that 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.

In response to the director's notice of intent to deny, the petitioner submitted four images of his works entitled "Welcome Spring," "Spring Flavor," "Garden," and "Huge Mythical Bird" which he claims were published in *The People's Daily Newspaper*. The petitioner also submitted an image of his painting "Spring of Peace" which he claims was published in *Chinese Folk Art Magazine*. The record, however, includes no evidence showing that the preceding works were actually published in the aforementioned newspaper and magazine. Nor is there evidence identifying the date, month, and year of the specific magazine and newspaper issue in which these works allegedly appeared. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N at 58, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190).

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 an "ISC 1997 Certificate" issued by the "Department of Art Products Cultural Market Development Center" of the Chinese Cultural Ministry authorizing the petitioner "to promote, introduce, sell, and export through domestic and international cultural markets." The record, however, 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. Further, the plain language 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 1996.

The petitioner’s appeal was filed on March 17, 2006. **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, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than seven 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.