



U.S. Citizenship
and Immigration
Services

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FILE:



WAC 05 129 53918

Office: CALIFORNIA SERVICE CENTER

Date: JAN 17 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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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. 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.

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 April 4, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a sculptor, decorating expert, and designer. 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, 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 stating that the petitioner's "artwork of color . . . won second place in the first annual art festival in Jinlin Province" (October 1989)
2. Certificate from the "Public Affair Department of Jilin Province" stating that the petitioner was chosen as "one of the Talented Young Artists" (February 1996)
3. Certificate of encouragement issued by the "Jilin Government" stating that the petitioner's work "Chinese Dragon' . . . made a great impact" at the 11th Annual Culture Art Exhibition (December 1993)
4. Certificate from the "News Publishing Department of the People's Republic of China" (January 2000) stating: "After careful review of your work Joy and the photos you submitted for the new millennium photography competition, I am very pleased to announce that your work has won the best display award."
5. Certificate from the "Contemporary Art Association of the People's Republic of China" stating that the petitioner's glasswork "Kindness" won the "outstanding award" at an unidentified exhibition in June 1994
6. Fill-in-the-blank "Award of Merit" issued by the "Queen Elizabeth II Arts Council of New Zealand" (1991)
7. Certificate stating that the petitioner's "glasswork 'Scenery' . . . won the first place in the Millennium Luxury Architect Design Competition" (December 1995)
8. Certificate stating that the petitioner's artwork won an "outstanding award at the 4th Art Festival in Jinlin Province" (October 1992)
9. Certificate stating that the petitioner "won the Outstanding Achievement Award" presented by the "Jilin Government" (December 1995)
10. Certificate from the "Jilin Government" stating that the petitioner was appointed as "one of the top ten young artists in the nation" (August 1995)
11. "Honor Certificate" stating that the petitioner's "glass sculpture skill . . . won the first place in the 1st national exhibit competition" (August 1997)

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 were not certified as required by the regulation.

In regard to items 1, 2, 3, 8, 9, and 10, we find that these awards reflect provincial recognition rather than national or international recognition.

In regard to items 2 and 10, we find that such “young artist” awards offer no meaningful comparison between the petitioner and the most experienced and practiced sculptors. There is no indication that the petitioner faced competition from throughout his entire field, rather than his approximate age group within that field. These awards are not an indication that the petitioner has reached the “very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2).

In regard to items 4 and 11, we note that these certificates were allegedly issued to the petitioner in China in January 2000 and August 1997. The petitioner, however, has been present in the United States since November 28, 1996. Further, for some inexplicable reason, item 4 discusses “photos” that the petitioner submitted for a “photography competition.” We note, however, that the petitioner’s stated area of expertise is the “glass sculpture-making field” rather than photography. The petitioner has not resolved these 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.

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. 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 2000. The absence of awards in recent years indicates that the petitioner’s acclaim has not been sustained.

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 two certificates issued in 1995 appointing him as a board member of the Chinese Art Association and the Art Association of Jilin Province. There is no evidence showing the duration of petitioner's appointments or whether he remains an active member of these organizations. Further, the record does not include the membership bylaws or the official admission requirements for the Art Association of Jilin Province.

On appeal, the petitioner submits a document entitled "Chinese artist association regulation." We cannot accept this evidence, however, because the English language translation accompanying the document was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The evidence submitted by the petitioner fails to show that admission to membership in the preceding associations required outstanding achievement or that he was evaluated by national or international experts in consideration of his admission to membership.

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.¹

The petitioner submitted what he alleges is an article that appeared in the September 29, 1990 issue of *People Daily News*. On appeal, the petitioner submits information regarding the national distribution of this Chinese publication. The translation accompanying the petitioner's *People Daily News* article, however, was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner also submitted what he alleges are articles from 2001 appearing in the *American Art Glass Quarterly* and the *Taipei Times*. There is no evidence showing that these publications have substantial national readership or that the petitioner has been the subject of media coverage in the United States, Taiwan, or China subsequent to 2001. An aggregate of three articles in the fifteen-year period preceding this petition's filing date is not adequate to demonstrate that the petitioner has earned sustained national or international acclaim.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

¹ 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 what is alleged to be an article he wrote in September 2003 entitled “[The petitioner] Glass.” The name of the publication in which this article appeared has not been identified. The petitioner also submitted what he alleges is evidence of his authorship of a book entitled *The Spectacle of Beauty of the Glass Work*. There is no evidence of the field’s reaction to these publications, nor any indication that they are widely viewed as significantly influential. Furthermore, there is no evidence showing that the petitioner’s publications had substantial national or international readership.

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 cannot be determined that the petitioner’s works are among those shown. The petitioner also submitted what appears to be an announcement for an exhibition of the petitioner’s work at the Contemporary Arts Museum of Houston. The record, however, includes no information about this museum or evidence from an official representative of the museum confirming its display of petitioner’s work. The specific names, dates, and locations of the petitioner’s other exhibitions and showcases have not been identified. Nor has the petitioner submitted contemporaneous evidence of his participation in other exhibitions in the form of event programs or art brochures.

In this case, there is no evidence demonstrating that the petitioner’s works have been displayed at significant national venues. Nor is there any indication that the petitioner’s works have been featured along side those of artists who enjoy national or international reputations. Furthermore, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his work alone.

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).

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 contains 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.