

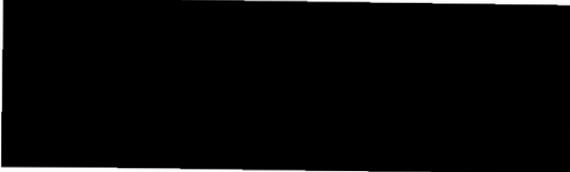


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FILE: WAC 04 175 50285 Office: CALIFORNIA SERVICE CENTER Date: **MAR 28 2006**

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:



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, 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 June 3, 2004, seeks to classify the petitioner as an alien with extraordinary ability as an artist (painter) and inventor. 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 1999. 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 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 a "Certificate of Recognition" issued in 2002 by _____ a non-profit organization located at 5565 Canoga Avenue, Suite 201, Woodland Hills, California. The certificate was presented to the petitioner "for his contribution to the visual arts and participation in the Second Seasonal Art Exhibition" in Hollywood, California. There is no evidence showing that this certificate is a nationally or internationally recognized award for artistic excellence, rather than simply an acknowledgment of the petitioner's participation in a regional art exhibition.

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 a letter from _____ Secretary, Iranian American Visual Artists (IAVA) non-profit organization of Irvine, California, stating that the petitioner has been an IAVA member for four years. _____ further states: "This group includes visual artists from the greater Los Angeles, Orange County, and San Diego areas. It allows for the networking and cooperative efforts of fellow artists as well as social interaction and encouragement."

Representative of the Iranian Writers Association (in exile) in the United States, states that the petitioner "is a member of the Iranian American Painter's Association in Los Angeles."

The record, however, does not include the membership bylaws or the official admission requirements for the preceding organizations. There is no evidence showing that 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.

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 articles from the 1990's appearing in the [REDACTED] (5), [REDACTED] magazine (2), and [REDACTED] magazine (1). The record, however, includes no evidence showing that these publications had substantial national readership. Further, none of these articles were accompanied by English language translations as required by this criterion and in accordance with the regulation at 8 C.F.R. § 103.2(b)(3). 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. Without proper translations, it cannot be determined if the petitioner is the primary subject of the material or if the material demonstrates his national acclaim as an artist, instructor, or inventor. Finally, we note that the authors of the majority of the articles submitted by the petitioner were not properly identified as required by this criterion.

As further evidence under this criterion, the petitioner submitted what appear to be promotional flyers prepared by "World Contemporary Art" of Woodland Hills, California (promoting an upcoming exhibition of sixteen artists entitled "Persia 2002") and by the IAVA of Southern California (promoting its monthly meetings at the Encino Community Center). We do not find that such promotional materials distributed in the Southern California region reflect published material "in professional or major trade publications or other major media." Promotional items, which are not the result of independent journalistic reportage, cannot serve to meet this criterion. Such material is simply not indicative of national or international acclaim.

On appeal, the petitioner submits an article published in Farsi in the April-May 2005 issue of *Hamsayegan*. This article cannot be accepted, however, because it came into existence subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Aside from the issue of the date that this evidence came into existence, there is no evidence showing that this publication had substantial national readership. Because the overwhelming majority of the U.S. population does not read or comprehend Farsi, it has not been shown that an article appearing in such a publication constitutes published material in "major media." Finally, we note

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.

that this article was unaccompanied by an English language translation as required by this criterion and in accordance with the regulation at 8 C.F.R. § 103.2(b)(3).

On appeal, counsel states: "It should be noted that in addition to hundreds of articles, there are several books that exclusively discuss and analyze [the petitioner's] artistic values and significance of his work in the intellectual world." The record, however, includes no evidence to support this assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition to the preceding deficiencies, we note that the statute and regulations required the petitioner's acclaim to be sustained. The record, however, includes no evidence showing that the petitioner has been the subject of media coverage in Sweden, the United States, or any other country from 1999 to June 3, 2004, the petition's filing date. Upon consideration of the available evidence, we cannot conclude that the petitioner has established a pattern of sustained national media coverage that could reasonably be expected of a top national artist.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, serving as a judge for a national competition involving professional artists is of far greater probative value than serving as a judge for a local competition involving students or amateur artists.

The petitioner submitted a letter of support from [REDACTED] of the University Extension Organization of Karlskrona, Sweden.² [REDACTED] states that the petitioner "was employed as a class director for studio courses, both at the beginning level and for advanced courses, in drawing, oils, watercolors and pastels."

On appeal, counsel states: "Inasmuch as [the petitioner] has been teaching at universities and colleges, he has been judging the artistic work of others."

While a teacher, or an artist who teaches, does evaluate the work of his or her pupils, this evaluation is inherent in the process of teaching. It does not, however, elevate the teacher or artist above most others in the field. The petitioner's ability to teach art classes or to provide an occasional community lecture on a particular art topic is not adequate to demonstrate his national or international acclaim. Without evidence showing that the petitioner's activities involved evaluating professional artists at the national or international level, we cannot conclude that he meets this criterion.

² The University Extension Organization is an Adult Education Association that offers courses from the Universities of Stockholm, Uppsala, Goteborg, Lund (where the petitioner taught), and Umea. As noted by the director, there is no evidence showing that the petitioner's classes represented qualifying courses for a university degree in the arts.

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

The petitioner submitted various letters of support from individuals involved with organizations with which he has been affiliated.

██████████ states: “[The petitioner’s] unique invention of an easel that for the first time could be used for the teaching of art and painting has been patented in the United States and internationally. This easel/display stand is one that allows the artist or student to rotate the still life objects to view them from many angles.”

██████████ Vice President, Studio Fine Art, Westlake Village, California, states: “[The petitioner] is an established and creative painter. . . . [The petitioner] has developed and patented two separate inventions, designed to aid artists, educators and students. . . . [The petitioner] is interested and currently available for participation in U.S. based art exhibitions.”

The petitioner submitted a certificate showing that he holds a U.S. patent for his “Paint Easel and Display Rack Assembly,” but there is no evidence showing that this invention qualifies as contribution of “major significance” in his field. For example, there is no evidence showing substantial commercial interest in this product or evidence of it being manufactured and successfully marketed nationally or internationally. The granting of a patent demonstrates only that an invention is original. It does not necessarily follow that an approved patent represents a contribution of major significance in one’s field. For purposes of this criterion, far more important than the existence of an approved patent is the significance of that invention to the greater field. In this case, the evidence of record is not adequate to demonstrate that the petitioner’s patented invention has attracted a substantial level of interest beyond the petitioner’s local art contacts and members of the Iranian arts community in Southern California. Without evidence of substantial national impact, we cannot conclude that the petitioner’s patented inventions meet this criterion.

On appeal, the petitioner submits a letter from Dr. ██████████ Professor of Art History, California State University, Los Angeles, who states:

I have known [the petitioner] for more than a year and I would like to impress upon the reader of this letter the unique and special talents that set him apart both as an individual and a scholar. [The petitioner] is an artist and an inventor, who has distinguished himself as a creative individual and also researcher among his colleagues. [The petitioner’s] art reflects fully the postmodern sensibilities that permeate the artistic climate of American expressions. For an Iranian born artist it is uncanny how American he is in his style and reach. His paintings are eagerly sought by collectors and decorators and his success is beyond doubt.

I have also had the pleasure of attending his lectures on classical Iranian art and European postmodernism at the Art Center College of Design in Pasadena. The event was at my invitation to speak to a large audience eager to understand the many facets of the Iranian art and civilization. I have been deeply impressed by the depth of his knowledge and his original thoughts on the subject. My students, mostly Americans, were mesmerized by his lecture. His approach was structured but not dry.

He showed an uncanny ability to synthesize the artistic method with an emotional base from which the cultures had evolved. He proved himself a beacon, as he offered an intellectual vista so enriching that all the students furthered their understanding and, thus the dialogue, between the West and the East.

In addition to his extraordinary intellect and ability as a scholar and historian, [the petitioner] is also an artist of renown. He is a rare talent and a phenomenal artist whose presence in America is another sign of our good fortune to gather the best creative minds of the world in this land.

The record, however, includes no evidence showing that the influence of the petitioner artwork and lectures in the United States extends beyond Southern California. Nor is there evidence in the record to support Dr. Dandeshvari's assertion that the petitioner's "paintings are eagerly sought by collectors and decorators."

The letters of support submitted by the petitioner describe him as a talented artist and inventor, but they are not adequate to demonstrate that his artistic contributions have had a major impact on the greater field. Original submissions for display or exhibition are expected of artists and do not set the petitioner apart from other capable painters. The record does not indicate the extent of the petitioner's influence on other artists outside of Southern California, nor does it show that any specific works by the petitioner are particularly renowned as works of modern contemporary art. The petitioner has not shown that his works have garnered widespread national attention, often command unusually high prices, or are in high demand among museum curators or gallery owners throughout the United States, Sweden, or any other country. Without extensive documentation showing that the petitioner's artwork or inventions have been unusually influential or highly acclaimed at the national or international level, we cannot conclude that they qualify as a contribution of major significance.

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

The letters of support from Kaveh Abrishami and Adel Rakhshani state that the petitioner has written published articles, but the record includes no evidence to support their claim. This criterion requires "evidence" of the actual published articles, rather than third-party letters attesting to the existence of such articles. Nor is there evidence showing that the petitioner's articles appeared "in professional or major trade publications or other major media."

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

The petitioner submitted evidence of his paintings and promotional materials related to his various local exhibitions in Southern California and Sweden.³ The record, however, includes no information regarding the reputation of the venues that featured the petitioner's artwork. We further note that display of the petitioner's work for purposes of sale carries significantly less weight than does museum display, strictly for the purposes of public viewing. To hold otherwise would be to qualify every artist who allows his or her work to be seen prior to purchase, thus defeating the restrictive purpose behind this criterion.

³ The promotional materials from Sweden were not accompanied by certified English language translations.

In this case, the petitioner has not submitted evidence showing that his works have regularly been displayed at exclusive national venues. Nor is there any indication that the petitioner's works have often 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 major venues devoted to the display of his work alone. The evidence presented by the petitioner is not sufficient to show that his exhibitions enjoy a national reputation or that participation in his exhibitions was a privilege extended to only top national or international artists.

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 as an artist, instructor, or inventor 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.