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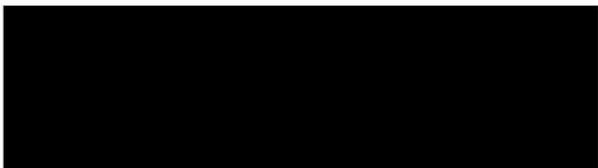
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U.S. Citizenship  
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Services

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FILE: [REDACTED]  
EAC 03 022 51855

Office: VERMONT SERVICE CENTER

Date: DEC 30 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*J. Grissom*  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center on February 4, 2005. The director reopened the matter on the petitioner's motion, and denied the petition again on June 22, 2005. The matter 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 in the arts. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that she qualifies 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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-99 (Nov. 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 she has sustained national or international acclaim at the very top level.

This petition, filed on October 15, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a lacquer artist. The petitioner submitted a June 12, 2002 letter from [REDACTED] Executive Director, Chinese Community Television Network, New York, stating:

We . . . arrange television shows and programs about Chinese News, community events and cultural lectures every weekend at our Chinese Community Television Network (Channel 35 in New York area). [The petitioner] has been employed as our artistic director for the graphic arts and stage design since August 2000.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria.<sup>1</sup>

*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. A May 10, 1986 certificate issued by the Arts and Crafts General Corporation of the Ministry of Light Industry and the Quality Control Association for Lacquer Ware of China stating: "This certificate is issued to testify that the art work, entitled 'Water Country' by [the petitioner], [REDACTED] and [REDACTED] has won Award of Excellent Work at 1986 Chinese Lacquer Painting Exhibition."
2. A December 29, 2000 "Certificate of Award" stating that the petitioner received a "Golden Award of in [sic] Lacquer painting in the Millennium."
3. A May 2002 "Certificate of Award" presented to the petitioner stating: "It is certified that you have been awarded the outstanding artist in Lacquer painting of China in 2002 for you have made great achievements in the art creating [sic] and international art exchange."

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS 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

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

from the foreign language into English. The English language translations accompanying the preceding certificates were not certified by the translator as required by the regulation. Further, with regard to items 2 and 3, the record does not include supporting evidence demonstrating the significance of these awards.

Regarding item 1, the petitioner's response to the director's notice of intent to deny included a June 3, 2005 letter of support from [redacted] Manager of Cultural Department, Chinese American Association of the United States of America, stating:

I am writing to provide background information regarding the "Excellent Award" which was conferred upon [the petitioner] in 1986 by the committee of the first National Lacquer Paintings Exhibition.

This Exhibition was sponsored by the Ministry of Culture of China and issued awards for five types including the Encouraging Prize, 3<sup>rd</sup> Prize, 2<sup>nd</sup> Prize, 1<sup>st</sup> Prize and Excellent Prize. The Excellent Prize is the highest award among them and only five this kind of award issued at the Exhibition [sic].

We note that [redacted] is not from the organizations that issued the award. Further, the record lacks supporting evidence establishing the significance and magnitude of the preceding competitive exhibition. Nor is there information from the presenting organizations indicating the selection criteria for award recipients. On appeal, the petitioner submits newspaper articles from May 1986 discussing the 1<sup>st</sup> China Lacquer Painting Exhibition, but these articles were not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3).

The petitioner submitted a March 1, 2002 "Award Notice" from the World Peace Award Art Competition Committee, University of Houston, stating: "You are one of the award recipients for the First World Peace Award Competition! . . . We have received more than 1000 pieces works [sic] from all over the world, such as the United States, Canada, France, Italy, China, Japan, etc." The petitioner also submitted an award ceremony invitation, an "Outstanding Award" certificate, and program material reflecting that the exhibition and award ceremony occurred in May 2002. The petitioner's evidence also included a March 16, 2005 letter from [redacted], Co-Chairman of the World Peace Award Art Competition Committee, Asian American Studies Center, University of Houston, stating:

In 2001 [the petitioner] participated the [sic] 1<sup>st</sup> World Peace Award Art Competition co-sponsored by the University of Houston, World Art Center and Dalian Art Collage [sic], and won the outstanding prize (only five of this kind prizes [sic] presented among the 8700 participated [sic]) by her wonderful lacquer painting.

Contrary to the statement in the letter from [redacted] indicating that the first World Peace Award Art Competition occurred in 2001, the petitioner's Award Notice, "Outstanding Award" certificate, and other supporting documentation reflect that it occurred in 2002. Further, the documents submitted by the petitioner provide different information regarding the number of

entrants. 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. *Id.* at 591.

With regard to the awards submitted by the petitioner, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that her awards be nationally or internationally *recognized* and it is her burden to establish every element of this regulatory criterion. In this case, the petitioner has not submitted evidence showing that the preceding awards commanded significant recognition beyond the presenting organizations consistent with sustained national or international acclaim. For example, there is no evidence of national press coverage surrounding the petitioner's receipt of the preceding awards or other evidence showing that they have a substantial level of recognition.

The petitioner also submitted "Certificate[s] of Exhibitor" from the 1980s reflecting that her paintings qualified for exhibition at the Chinese Lacquer Painting Exhibition, the Exhibition of Suzhou Municipal Arts and Crafts, and the Cultural Event Series of the Suzhou Municipality. The English language translations accompanying these certificates were not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that these certificates are nationally or internationally recognized awards for excellence, rather than simply an acknowledgment of the petitioner's participation in the exhibitions.

On motion, the petitioner submitted a September 26, 2003 Certificate of Award from the World Art Center and a December 2003 Certificate of Recognition from the American Education and Cultural Foundation of Houston, Texas. In response to the director's notice of intent to deny, the petitioner submitted a May 2003 newsletter from the South Bay Art Association (SBAA) of Bellport, New York indicating that her painting "A Girl" won 2<sup>nd</sup> Place in the Pastel category at the SBAA's 46<sup>th</sup> Annual Member's Show. The record also includes a certificate stating that the petitioner won a Silver Prize in the 4<sup>th</sup> International Golden Swan Art Competition in 2003. The petitioner received the preceding honors subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider these awards in this proceeding. Nevertheless, there is no evidence showing that the preceding honors are nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, the petitioner has not established that she 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 regulatory 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. Further, 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 evidence of her membership in the Artists' Association of Suzhou and the South Bay Art Association of New York. The record does not include supporting evidence (such as membership bylaws or official admission requirements) showing that these associations require outstanding achievements of their members as judged by recognized national or international experts in the petitioner's field or an allied one. The petitioner also submitted evidence showing that she was appointed as a council member of the World Culture Alliance (WCA) in July 2005 and as a member of the National Art League (NAL) in October 2003. The petitioner's membership in the WCA and the NAL commenced subsequent to the petition's filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider these memberships in this proceeding. Nevertheless, there is no evidence showing that they require outstanding achievements of their members as judged by recognized national or international experts in the petitioner's field or an allied one.

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

*Published material 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 general, 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 level from a local publication or from a publication printed in a language that the vast majority of the country's 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.<sup>2</sup>

The petitioner submitted two pages from a book entitled *Complete Works of Modern Chinese Arts* (1998). This book includes the artistic creations of hundreds of artists. On pages 50 and 178, there is a photograph of a "Lacquer Rubbed Wood Tray" made by the petitioner and a brief description. The petitioner has not established that this book, or any significant portion of it, is about her.

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<sup>2</sup> 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, for instance, cannot serve to spread an individual's reputation outside of that county.

Further, the English language translation accompanying this material was not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). Finally, there is no evidence (such as number of copies sold) showing that this publication qualifies as a major trade publication or some other form of major media.

On motion, the petitioner submitted a February 28, 2005 letter from the Editor-in-Chief of Hong Kong Celebrity Publishing Limited stating that an album of the petitioner's paintings "is scheduled to publish in October 2005." On appeal, the petitioner submits a July 12, 2005 article about her in the *Queens Chronicle* and a July 17, 2005 article in *The Trentonian* about the opening of her art studio in the Quaker Bridge Mall. The petitioner also submits an advertisement for her studio in the "Special Advertising Section" of the July 14, 2005 issue of the *The Trentonian*. The preceding materials were published subsequent to the petition's filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider these materials in this proceeding. Nevertheless, we cannot conclude that the unpublished album, the local newspaper articles, and the local advertisement meet the plain language of this regulatory criterion.

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

*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.*

On motion, the petitioner submitted a Certificate of Appointment stating that she was chosen as a member of the judging committee for the "1<sup>st</sup> International Disable Artists Art Competition" in November 2004. The petitioner's involvement with this competition occurred subsequent to the petition's filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, such evidence would be insufficient because the record contains no evidence showing the specific work judged by the petitioner, the names of those she evaluated, their level of art expertise, and documentation of her assessments.

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

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

We acknowledge the petitioner's submission of several reference letters praising her talent as a lacquer artist. Talent in one's field, however, is not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted her field.

[REDACTED], Professor, Central Institute of Arts and Crafts, states:

[The petitioner] has been an artist of lacquer painting for many years. In the past, she studied in Sichuan Art School under the tutorship of [REDACTED], president and well-known lacquer expert in China, and scored excellent results. Not only has she gained a solid foundation in traditional lacquer art, but proved herself to be creative. She was warmly appreciated by the teachers.

In 1984, she entered Central Institute of Arts & Crafts through examination and studied the art of lacquer painting under my training. She was intelligent, inquisitive, hardworking, and perceptive to the art, and achieved a lot more than her classmates. Her interpretation of the art is convincing to the connoisseurs. On the basis of the fundamental knowledge of traditional lacquer art, she made a point to develop the painting expressions of the lacquer art, and therefore uplifted the lacquer art to the realm of modern aesthetics. She was indeed outstanding among those I have taught.

In 1987, [the petitioner] worked as my assistant in the project of large-scale lacquer mural of Shijiazhuang Railway Station, during which her talent in lacquer painting was given full play. Her outstanding performance and skills left us a deep impression. Besides, her management expertise and coordinating capability on the spot helped a great deal in completing this project.

To have better grasp of the development trend of modern lacquer art, [the petitioner] entered the reputed Arts & Crafts University of Kanazawa, Japan, to study the techniques of modern lacquer art. There, she had the opportunity to learn from [REDACTED] famous Japanese lacquer expert, a good luck not only for herself, but also a pride for the Chinese lacquer artists. She participated in various exhibitions in Japan and displayed her own works, which represented her unique style by integrating the characteristics of Chinese and Japanese lacquer art and by combining the traditional lacquer art with modern aesthetics. She achieved creative and original results.

Since her graduation abroad, she has been devoted to the promotion of Chinese lacquer art, often shuttling between China, Japan, and Korea for cultural exchanges in the art of lacquer ware. And from time to time she came out with new and creative works of her own.

[REDACTED] Professor, Kanazawa Arts and Crafts University, states: "The petitioner was an international student of Kanazawa Arts & Crafts University, specializing in lacquer art from 1993 to 1994. . . . During that period of two years, she made amazing progress in her major."

Artist and Visiting Professor, University of Houston, states: "I found [the petitioner's] art is fundamentally solid. And her lacquer paintings are especially astonishing."

Professor in the Arts, Central University for Nationalities, states: [The petitioner] is a lacquer painting artist with unique creativity. She has been working assiduously in the lacquer painting world, attempting to discover a way to express her ideal. . . . [The petitioner] is progressing in her own way. She has a rich potentiality of creation."

[REDACTED], Director of International Exchange Department, U.S. Education, Science and Cultural Foundation, states: “[The petitioner] has demonstrated excellence in art and lacquer paintings. There is no doubt in my mind that [the petitioner] by experience and training, has sufficient qualification to be considered a highly accomplished artist in lacquer painting.”

[REDACTED], a Chinese artist, states:

I am mostly impressed by [the petitioner’s] traditional lacquer techniques, the delicateness that conveys special oriental aestheticism. The execution of the stroke, itself, is varied, sensitive and revealing. I have no doubt that [the petitioner’s] artistic expertise will greatly benefit our contemporary arts in a beautiful way.

With regard to the witnesses of record, many of them they discuss what will someday result from the petitioner’s work rather than how her past achievements already qualify as original contributions of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The petitioner seeks a highly restrictive visa classification intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. *See* 8 C.F.R. § 204.5(h)(2).

[REDACTED], a water color artist, East Side Art Center, states:

As far as my experience in watercolor painting is concerned, I am certain that [the petitioner] is an exceptional artist in China. Her techniques at lacquer sculpturing are mature as well as precise, showing the tradition of and beauty of human life and perfectly adding elements of Eastern aestheticism and cultural inner strength.

It is apparent that her works are different from the style of Western Classicism and naturalism artistry, her unique style represents nature itself, and because she is [sic] talented designer of lacquer art forms, they have naturally absorbed the oriental essences.

The evidence submitted by the petitioner does not establish that her artistic achievements constitute original contributions of major significance in contemporary art. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. While the petitioner’s artwork has earned the admiration of those providing letters of recommendation, there is nothing to demonstrate that her work has had major significance in the field at large. For example, the record does not indicate the extent of the petitioner’s influence on other artists nationally or internationally nor does it show that the field has somehow changed as a result of her work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements

submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an artist who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she 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.*

The petitioner submitted a 14-page publication that she identifies as her book entitled *My passion for the Art of Lacquer Painting* (2000). The English language translation accompanying this glossy paperback was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the petitioner has not established that her book is a major art publication. For example, there is no evidence showing the number of copies of this book in print, that the book had substantial national or international readership, or that the book was otherwise circulated in a manner consistent with sustained national or international acclaim. As such, the petitioner has not established that she meets this criterion.

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

The petitioner submitted "Certificate[s] of Exhibitor" from the 1980s reflecting that her paintings qualified for exhibition at the Chinese Lacquer Painting Exhibition, the Exhibition of Suzhou Municipal Arts and Crafts, and the Cultural Event Series of the Suzhou Municipality. The English language translations accompanying these certificates were not certified by the translator as required by the regulation 8 C.F.R. § 103.2(b)(3). The petitioner also submitted evidence showing that two of her paintings were displayed among hundreds of others in the Ishikawa International Urushi Design Exhibition in 1996. On appeal, the petitioner submits evidence showing that she has operated an art booth at Neshaminy Mall since May 2004 and opened an art gallery and studio in the Quaker Bridge Mall in 2005. The petitioner's work was displayed in these shopping malls subsequent to the petition's filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding.

With regard to the galleries, exhibitions, and competitions in which the petitioner's works were shown, it must be stressed that an artist does not satisfy this criterion simply by arranging for her

work to be displayed. In this case, the petitioner has not submitted evidence showing that her paintings have been displayed at significant artistic venues consistent with sustained national or international acclaim at the very top of her field. For example, there is no indication that the petitioner's works have consistently been featured along side those of artists who enjoy national or international reputations, that she has regularly participated in shows or exhibitions at significant venues devoted primarily to the display of her work alone, or that renowned art museums have displayed her work.

In light of the above, the petitioner has not established that she 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.*

On appeal, the petitioner submits a March 25, 2005 Certificate of Appraisal from the "U.S. Academy of Science for World Celebrity" stating that her painting "Playing Fishes" has an appraised value of \$13,500. There is no evidence showing that the painting actually sold for that amount. The petitioner also submits her U.S. income tax returns reflecting that she had business income of \$19,926 in 2003 and \$16,842 in 2004. The petitioner's appellate submission also includes a "Statement of Income for the six months ended June 30, 2005" reflecting that her businesses at the Neshaminy Mall and the Quaker Bridge Mall had a combined net income of \$7,483. The petitioner earned this income and was issued her appraisal certificate subsequent to the petition's filing date. As discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Nevertheless, the plain language of this regulatory criterion requires the petitioner to submit evidence showing that she has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field. There is no indication that the petitioner has earned a level of compensation that places her among the highest paid artists in the United States or China.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she 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 herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a 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.