

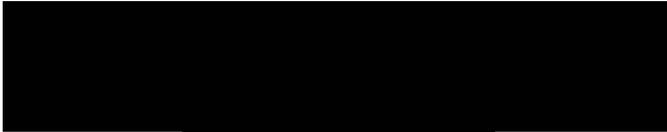
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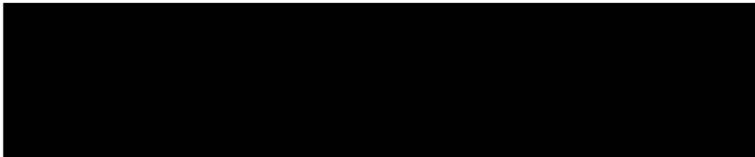
FILE: [Redacted]  
SRC 06 183 52584

Office: TEXAS SERVICE CENTER Date: **JAN 30 2008**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also found that the petitioner had not sufficiently established her “plans for continuation of her work in [her] field in the United States.”

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

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, 60898-99 (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 May 22, 2006, seeks to classify the petitioner as an alien with extraordinary ability as an oil painting artist. 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 a major, internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. We find that the petitioner's evidence meets at least three of the regulatory criteria.

*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.*

The petitioner submitted her membership cards for the Japan Artists Association and the Dokuritsu Art Association.

In response to the director's request for evidence, the petitioner submitted the bylaws for the Japan Artist Association. Article 6 of the bylaws indicates that a new member must be "[a]n artist active in painting, printmaking or sculpture and who has demonstrated achievement through national or international recognition."

The petitioner's response also included "Regulations of the Dokuritsu Art Association." Under Chapter 4, "Elected Member," the regulations state: "An elected member will be a past exhibitor and will be recommended by the Dokuritsu Art Association when she/he receives Dokuritsu Prize or equal award in the Dokuritsu Exhibition."

On appeal, the petitioner submits a January 8, 2007 letter of support from Professor, Hokkaido University of Education, Japan, stating:

The Dokuritsu Exhibition is run by artists of the Dokuritsu Art Association and held at the Tokyo Art Museum yearly. The Dokuritsu Art Association was established in 1930 by fourteen of the most prominent Japanese artist of that time period . . . .

**"Dokuritsu" means "independent" (as quoted in the Paris Salon) as does the exhibition. The Dokuritsu Art Association desired to be independent from Paris and to establish Japanese oil painting when it first organized. The Dokuritsu Exhibition consisted of approximately 120 elected members and over 2000 applicants in a competition group show. Therefore the Dokuritsu Exhibition selected from both applicants' and elected members' paintings for inclusion, and those selected paintings competed at the Tokyo Art Museum. . . .**

The petitioner also submits a March 8, 2003 article in *Asahi Shimbun*, a major Japanese publication, stating:

In 1930 Dokuritsu Art Association became an official salon exhibition and was established by the most prominent artists. The Dokuritsu Exhibition was held seventy times by invitational entries from the public in a prizewinning contest for best painting; though it had interruption by the Second World War.

\* \* \*

The founding fourteen artists . . . had been in France, but they announced that they would “Declare their independence” when they organized the Dokuritsu Art Association.

The preceding documentation and further evidence in the record are sufficient to demonstrate that the Dokuritsu Art Association and the Japan Artists Association require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field. As such, the petitioner has 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.*

The petitioner submitted evidence that she served as a judge for the Dokuritsu Exhibition at the Tokyo Art Museum in 2000, 2001, and 2005. As such, the petitioner has 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 evidence showing, *inter alia*, that she has exhibited her work at the Ginza Surugadai Gallery in Tokyo, the Tokyo Art Museum, the Museum of Modern Art in Saitama, and the Cork Gallery at Lincoln Center in New York. The petitioner also submitted documentation (such as media reportage) showing the significance of her art venues. As such, the petitioner has established that she meets this criterion.

In this case, we withdraw the director’s finding that the petitioner did not satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The totality of the evidence establishes an overall pattern of sustained national acclaim and extraordinary ability.

We also withdraw the director’s finding that the petitioner had not sufficiently established her plans for continuation of her work in the United States. 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 a September 26, 2006 “Artist’s Statement” and a second “Artist Statement” submitted on appeal which adequately detail the petitioner’s plans on how she intends to continue her work in the United States. The record also includes evidence that the petitioner has exhibited her work in New York and that she is a featured member of the Prince Street Gallery. Thus, the petitioner has established that she seeks to continue working in the same field in the United States.

In light of the above, the petitioner has overcome the stated grounds for denial and thereby established her eligibility for immigrant classification under section 203(b)(1)(A) of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.