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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE: [REDACTED]  
LIN 08 042 51622

Office: NEBRASKA SERVICE CENTER

Date: JUN 25 2009

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)

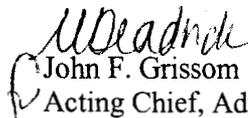
ON BEHALF OF PETITIONER:

[REDACTED]

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).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief.

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.

U.S. Citizenship and Immigration Services (USCIS) and the 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 (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 has 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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an artist of oil paintings. 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 of the criteria outlined in 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 that, he claims, meets 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.*

According to counsel, the petitioner was the recipient of an award "issued by the International Association of Educators for World Peace NGO [IAEWP]," an organization under the auspices of the United Nations (UN). The petitioner submitted a copy of a document containing a July 2006 message to the organization from the former Secretary-General of the UN, Kofi Annan. The document also includes a section on which the petitioner's name appears. However, that portion of the document is written in Korean and is not accompanied by an English translation. Because the petitioner failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In a request for evidence (RFE) dated April 14, 2008, the director advised the petitioner that the documentation "appears to be in recognition for exhibiting art work." In his May 18, 2008 letter accompanying the petitioner's response, counsel stated:

The . . . special annual event held in Korea began in 1998 advocating Humanity and Love. Although hundreds and thousands of artists from all over the world have been participating to this significant event each year and their works are to be selected for three different awards, i.e. Grant Prize, Best Prize and Excellent Prize, art work exhibition as [the petitioner's] are for display purpose only as significant and incomparable achievement representing each participating country.

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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.

Nothing in the record supports counsel's statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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). Counsel also stated:

The publication of 9<sup>th</sup> World Peach [sic] Art Exhibition 2006 evidenced that [the petitioner's] work belonged to Foreign Artist Section for display for its outstanding achievement, instead of Common Work section for competition. Art Work which is selected for display purpose in this significant event grants the participants a great honor as an award for his/her outstanding achievement.

The petitioner submitted a photograph of a book, *2006 IAEWP, NGO-UN World Peace Art Exhibition*, and a photograph of a page that he states shows the petitioner's painting. However, nothing in the documentation submitted indicates that the petitioner was awarded any type of award at the exhibition and the petitioner submitted no documentation that an award presented by the IAEWP is nationally or internationally recognized as an award of excellence in the petitioner's field of endeavor.

On appeal, counsel asserts:

By reviewing this book, it is manifest that all art work is divided into two sections, the Common Work section and the Foreign Artist section. The former contained those work[s] submitted for competition. In contrast, the latter contained those work[s] invited by the Association. Only couples of artists are invited from each country; that is, only those leading artists with outstanding achievements are selected as representative painter[s] of their countries. This is a great honor as an award consistent with international acclaim.

The petitioner submitted a photograph but did not submit a copy of the book itself. Therefore, it is impossible for the AAO to review the book as suggested by counsel. Documents that may or may not be pages from the book are not accompanied by English translations as required by 8 C.F.R. § 103.2(b)(3). Accordingly, they are not probative and will not be accorded any weight. Additionally, counsel's assertion that mere selection to be included in the book is "an award consistent with international acclaim" is not supported by any evidence in the record. The petitioner submitted no documentation to indicate that the IAEWP presented any awards at this exhibition or that any award provided by the organization is nationally or internationally recognized as an award of excellence in the petitioner's field.

The petitioner also submitted a photograph of a trophy indicating that it was the Gold Award presented by the International Chinese Artists Association, USA (ICAA) on March 5, 2004 and a copy of a certificate from the association indicating that it was for the Gold Award. No name appeared on the trophy or the certificate.

In response to the RFE, the petitioner submitted a May 16, 2008 letter from [REDACTED] Secretary of ICAA certifying that the petitioner was the winner at the 2004 ICAA Exhibition. [REDACTED] stated that the association was founded in 1995 and holds exhibitions for outstanding achievement every three years and provides three prizes, the Gold, Silver and Copper. [REDACTED] further stated that the “panel of judges includes top and national treasure class master artists of Chinese Arts in the United States.” Nonetheless, the petitioner submitted no documentation to establish that the ICAA prizes are nationally or internationally recognized as awards of excellence in his field of oil painting beyond the subset of oil painters who are Chinese artists.

In his letter accompanying the petition, counsel also stated that the petitioner had received the following awards: first place award in the Great Wall Artist Exhibition organized by the Chinese American Artist Association, third place in the Celebration Exhibition of the 80<sup>th</sup> Anniversary of the Chinese Community Party, certificate issued by the Art Association of Liaoning Province, certificate issued by the Liaoning Province Government’s Culture Association, and an “Award of Excellence Certificate” issued by the Shanghai Artist Village Committee. The certificates documenting these awards are not accompanied by English translations. Accordingly, they are not probative evidence in this proceeding. *Id.* Furthermore, the petitioner submitted no documentation to establish that any of these awards are nationally or internationally recognized as awards of excellence in his field.

The petitioner has failed to establish 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.*

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 work 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. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner claims to meet this criterion based on his membership in the Shanghai Spring Art Salon and the Chinese Artist Association. The petitioner submitted a copy of a membership certificate for the Shanghai Spring Art Salon. However the document was not accompanied by an English translation. Other documents were also not accompanied by English translations and therefore are not probative. *Id.* In response to the RFE, the petitioner submitted a translation of his membership certificate in the China Arts and Crafts Association (CACA). The petitioner submitted no documentation of the membership requirements for the Shanghai Spring Art Salon or the Chinese Artist Association.

On appeal, counsel asserts that the CACA “is the ‘Chinese Artist Association’ mentioned in the original petition package.” However, nothing in the record supports this assertion of counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner provided the following partial translation of the CACA articles:

- (B) Individual Member must meet all the following requirements:
  - (a) Who is willing to join the association and admits its article;
  - (b) Who has at least a middle level and higher professional title/qualification;
  - (c) Who has at least 5 years professional work experience and trade school certificate;
  - (d) Who has invention, significant achievement and evidence of his/her authorship of scholarly articles in the field, in professional or major trade publications or other major [] media; [Emphasis omitted.]
  - (e) Who is enthusiastic about arts and crafts and initiates leadership.

As noted, the petitioner submitted only a partial translation of the articles of the CACA. Therefore, the translation does not comply with the provisions of 8 C.F.R. § 103.2(b)(3). Further, the translation indicates that individual membership in the organization may be obtained by “invention, significant achievement and evidence of . . . scholarly articles in the field.” The achievements enumerated in this requirement do not indicate that they are alternative means of obtaining membership but rather that the potential member must accomplish all of these achievements. The petitioner does not identify any artistic inventions that he has made and does not identify any scholarly articles that he has written.

Counsel asserts on appeal:

[T]he petitioner has submitted the Articles of CACA, which listed “significant achievements” as one of the membership qualifications. According to the Merriam-Webster’s on-line dictionary, “significance” means “having or likely to have influence or effect[.]” Thus, only those [who] have recognized achievements can become the member candidates for CACA.

Counsel does not demonstrate that “significant achievement” as judged by the CACA is equivalent to “outstanding achievement.”

The petitioner has failed to establish that he 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 order to meet this criterion, published material must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a copy of an article about the petitioner and his wife, also an artist. Although the petitioner included a cover page from *Shanghai Artist*, the record is not clear as to the source or date of the article. The petitioner also submitted a copy of an article about his wife that included his photograph and a mention of him as the spouse. However, the article is not about the petitioner or his work. The petitioner provided copies of other documents showing paintings and/or his photograph. However, none of these documents is accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3).

In response to the RFE, the petitioner submitted information regarding publications such as *Shanghai Artist*, *China Youth Daily*, and *Eastern [or Estearn] Weekend*.<sup>2</sup> The petitioner, however, failed to submit translations of the articles and other information allegedly printed in these publications. *Id.* Accordingly, none of the evidence is probative and will not be accorded any weight in this proceeding.

The petitioner has failed to establish that he meets this criterion.

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

In his letter accompanying the petition, counsel stated that the petitioner "is one of a select few talents in the world making artistic contributions to oil painting." As evidence, the petitioner submitted several letters of reference and recommendation.

In a November 8, 2007 letter, [REDACTED], secretary of the Chinese American Artist Association, stated the petitioner was "the first person who mastered combining western oil painting with traditional Chinese brush painting" and that his "works are part of the great contributions to the world peace." [REDACTED], chairman of the U.S. China Artist Association, in an October 8, 2007 letter, stated that the petitioner's "art works will remain as inseparable parts to the art field, and he'll always remain as a great artist and a great asset."

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<sup>2</sup> The translation accompanying the petitioner's document contains two different spellings for this document.

In another letter dated April 28, 2008, submitted in response to the RFE, further stated:

[The petitioner] is an outstanding Chinese painter of oil painting at such a young age. His painting expressed two major themes: Tibet and Chinese opera figure. What makes him unique is that he uses western style and painting skills to draw Eastern subject. He is the first one to paint Tibet, and his color is so prominent and imposing. He is the only one to paint Chinese opera figure . . . I sincerely believe that he will exert a tremendous influence as a bridge of cultural communication between the East and the West. . . . What he has to offer is his art, from composition, color to technique, which is a magnificent breakthrough through a rising art star of the new generation.

Neither of these individuals, while praising the petitioner's work, indicated that he made a contribution of major significance to his field of endeavor.

In response to the RFE, counsel also asserted that the petitioner meets this criterion based on the inclusion of his work in publications including *Master Piece Collection: China Arts and Crafts, The 21<sup>st</sup> Century Shanghai Great Culture Series, Shanghai Youth and Midlife Artists Commending Exhibition* and a publication "Art Exhibition to the 2<sup>nd</sup> Anniversary." The record does not indicate, however, that the petitioner's work in these exhibitions and publications influenced other artists, received substantial critical acclaim, or otherwise made original and major contributions to his field.

Counsel asserts on appeal:

[The petitioner] pioneer[ed] a new style in the field of oil painting because innovative aesthetic values have been established following the petitioner's selection of new painting themes. Further, due to its uniqueness, the petitioner's painting style can not be easily imitated. . . . Director failed to explain why the evidence submitted did not establish that the petitioner has introduced new techniques, methodologies, or "styles" that have been "recognized by others[.]"

The petitioner's choice of themes and his "uniqueness" do not, by themselves, indicate that the petitioner has made major contributions to his field. The record does not support counsel's claim that the petitioner's techniques, methodologies, or style have made major contribution to his field.

The petitioner has failed to establish 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 a copy of a section, "+art," from the January 10, 2003 edition of *HK Magazine* indicating that one of his paintings was showing at the Connoisseur Art Gallery

through January 26; and a copy of the April 22-28, 2004 edition of the *Shanghai Star* and a copy of an undated page from *that's Shanghai* announcing a showing of his work at the Maison Gallery from April 24 to May 3. A September 16-22, 2004 edition of *Shanghai Star* carried information about an exhibition at the Maison Gallery on September 20 to October 7. The announcement does not name the artists included in the exhibition. The petitioner also submitted a copy of a 2006 catalog from the Shanghai Youth and Midlife Artists Commending Exhibition indicating that one of his paintings was included. Other documentation submitted by the petitioner is in Chinese and is not accompanied by English translations. This documentation included photographs of the petitioner and/or paintings. However, as the petitioner did not submit translated copies of the documents, it cannot be determined whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3).

In response to the RFE, the petitioner stated that his work was published by the CACA, Chinese Culture Press, Mingyuan Culture Arts Center, and the Shanghai Artist Village, in their publications *Master Piece Collection: China Arts and Crafts*, *The 21<sup>st</sup> Century Shanghai Great Culture Series*, *Shanghai Youth and Midlife Artists Commending Exhibition* and "Art Exhibition to the 2<sup>nd</sup> Anniversary," respectively. The petitioner's documentation does not include English translations for the foreign language documentation submitted. Therefore, they are not probative in this proceeding. *Id.* The petitioner also submitted a copy of a 2005 invoice from Artexpo New York, billing the petitioner for space in the March 2006 show. The petitioner submitted no documentation to reflect that the invitation to participate in the exhibition was based on the petitioner's reputation within the art field.

The petitioner has submitted documentation indicating that his work has been part of exhibitions or included in publications of artistic work. Thus, the documentation indicates that he has had achieved some recognition in his field. However, the documentation falls short of the "extensive documentation" required by section 203(b)(1)(A)(i). The record does not indicate the significance or influence of the publications that included the petitioner's work. Additionally, many of the exhibitions that included the petitioner's work were prior to 2005, two years before he filed his petition and consisted of only one or two pieces of his work. The evidence does not establish that the petitioner's work was displayed in artistic showcases or exhibitions on a basis consistent with sustained acclaim.

The petitioner has not established that he meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor. Review of the record, however, 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. 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.