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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
SRC 08 141 51956

Office: TEXAS SERVICE CENTER

Date:

OCT 26 2009

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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).

Ubeadndk
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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. For the reasons discussed below, we uphold the director’s ultimate decision denying the petition because the petitioner has not submitted any documentation in support of counsel’s attestations about the significance of the petitioner’s accomplishments.¹ The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We note at the outset that the director did not address two of the criteria claimed by the petitioner: memberships in associations that require outstanding achievements pursuant to 8 C.F.R. § 204.5(h)(3)(ii) and display at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii). The director also did not reach a conclusion as to whether the petitioner meets the published materials criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii). We will address these criteria below, concluding that the petitioner meets the display criterion but not the other two. Significantly, the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

¹ While all of counsel’s unsupported assertions will be addressed in more detail below, we note the following examples: that one of the petitioner’s awards included a \$5,000 cash prize, that the petitioner is a member of associations with “the strictest” membership criteria and that *Misulsegae Magazine* is the most renowned art magazine in Korea.

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, 60898-9 (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 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 seeks to classify the petitioner as an alien with extraordinary ability as an artist (fine arts). 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 record adequately documents the petitioner's group and solo exhibitions in Korea and multiple states in the United States. The significance of these exhibitions is sufficiently documented. Thus, we are satisfied that the petitioner meets the display at artistic exhibitions or showcases criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii). The petitioner must, however, meet an additional two criteria. 8 C.F.R. § 204.5(h)(3). The petitioner has submitted evidence that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner documented the following awards:

1. A Top Honor Award at the 2003 Danwon Arts Competition festival;

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

2. A Special Selection Award at the 2003 Korean Broadcast System (KBS) Nature-Environment Art Competition sponsored by KBS of Chungju County;
3. A Promotion Award at the 2003 24th Silla Art Competition;
4. A Special Prize Award at the 2003 Second Korean Modern Women's Art Competition;
5. A Top Honor Award at the 2003 14th Misulsegae Grand Art Awards Competition sponsored by *Misulsegae Magazine*;
6. A Special Selection Award at the 2003 19th Moodeong Art Competition;
7. A Special Prize Award at the 2004 24th National Annual Prints Competition sponsored by the Korean Contemporary Printmakers Association and
8. An outstanding Achievement Selection honor at the 2004 23rd Grand Art Exhibition of Korea, sponsored by the Korean Fine Arts Association.

The petitioner submitted an interview in the September 2003 issue of *Misulsegae Magazine* about the petitioner's award from that magazine and an announcement of the petitioner's receipt of top honors at the 2003 Danwon Arts Competition Festival in *Kyungin Ilbo*. The record contains no media coverage of the petitioner's other awards. Materials for the 2003 and 2004 Grand Art Exhibitions of Korea confirm that they were at the National Museum of Contemporary Art.

In the November 4, 2008 request for evidence, the director requested that the petitioner "document" the requirements for the awards, the number of competitors and the national or international significance of the awards. In response, counsel asserted that *Misulsegae Magazine* is "the most renowned monthly art magazine in Korea," that the competition sponsored by this magazine is open nationally and that esteemed art critics, curators and professor choose 30 Special Selection and one Top Honor prizes from the 2,000 competitors. In addition, counsel asserted that the Grand Art Exhibition of Korea is the biggest and oldest art competition where the esteemed jurors selected the petitioner as one of 1,375 printmaking entries in 2003 and one of 1,492 entries in printmaking in 2004. Counsel further asserted that the petitioner won \$5,000 at the Danwon Arts Competition Festival. Finally, counsel discussed the other awards. The petitioner, however, submitted no evidence to support any of counsel's assertions, such as the official rules for these competitions, media coverage of the selection of awardees in the petitioner's year or even more recently or even letters from the organizers. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The director stated that the petitioner had received awards “in her local area” but had not documented that the awards “are recognized as [t]he highest level of competition in the art world.” On appeal, counsel states:

Our Response Package had made it clear that [the petitioner] won top national awards in South Korea and at no point did we claim that such awards were “recognized as the highest level of competition in the art world” – only that [the petitioner’s] artworks were recognized for their excellence by the esteemed individuals and entities within the fine arts industry of South Korea.

While some of the petitioner’s awards, such as the county-wide DSM award, appear to be inherently local, others such as the Grand Art Exhibition of Korea have titles that are consistent with a national competition. That said, it is the petitioner’s burden to demonstrate that the awards are nationally *recognized*.

As stated above, the petitioner did not submit any evidence to support counsel’s specific assertions about these awards, which appear amenable to documentation. Counsel did invite USCIS to review the Korean Fine Arts Associations’ website at www.kfaa.or.kr. While it is the petitioner’s burden to submit any relevant documentation, we did review this website, which can be accessed in English. While the association lists the exhibition on its calendar, accessed on October 8, 2009 and incorporated into the record of proceeding, the website does not provide any specific information about awards issued by the association. Even if we were to presume the significance of the Grand Art Exhibition of Korea from its location at a national museum, the petitioner last received an award in 2004, four years before the petition was filed. Thus, her awards are not indicative of or consistent with sustained acclaim in 2008 when the petition was filed. Regardless, for the reasons stated above and below, even if we concluded that the petitioner meets this criterion, the petitioner has not documented that she meets a third 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.

Initially, counsel asserted that it was “natural” for an artist of the petitioner’s caliber to belong to exclusive art associations where membership “is based on the strictest of criteria.” Counsel listed the Korean Fine Arts Association, the Hong Ik Printmakers Association (Korea), the International Artists Support Group (the United States), the Korea American Artists Association of the Greater Washington D.C., the Del Ray Artisans Association (the United States) and the MOCA DC Gallery Membership Association. As evidence of these memberships, the petitioner submitted a program for an exhibit by the Korea American Artists Association of the Greater Washington D.C. including her work and listing her at the end of the program. The petitioner also submitted a program for an exhibit by the Del Ray Artisans including the petitioner’s work. The petitioner did not submit membership identification

for any association or the bylaws or other official materials from these associations confirming their membership criteria.

The director specifically requested evidence of the requirements needed to join the above associations. In response, counsel simply reiterates that the petitioner is a member of associations with the “strictest of criteria.” Counsel’s first example is Empowered Women International (EWI). While counsel referenced Exhibit H, that exhibit is a local Korean newspaper promotion of an exhibit by the Alexandria Area Art Association. The petitioner did submit a letter from [REDACTED] of EWI, asserting that the petitioner joined as an artist member in 2008 and was featured at an annual exhibition. [REDACTED] explains that she created EWI in 2001 “to provide entrepreneurial opportunities for immigrant women artists and to build multicultural understanding, civic engagement and citizenship through the power of arts.” [REDACTED] does not suggest that EWI limits membership to those artists with outstanding achievements as judged by national or international experts in the arts.

Counsel further asserted that the Korean American Artists Association of the Greater Washington D.C. Area is the oldest and most prestigious organization of its kind in Virginia, Maryland and Washington, D.C. Counsel referenced exhibit J, which is a program for an exhibition sponsored by this association featuring, among other artists, the petitioner’s work. This program does not provide any information about the association or its membership requirements. As a local Washington, D.C. area association, it does not appear that membership is judged by national or international experts.

Counsel then attempted to equate three gallery “memberships” to association memberships that might qualify for eligibility under this criterion. We have already conceded that the petitioner meets the display at artistic exhibitions criterion based on the display of her work at exclusive exhibitions and showcases. We are not persuaded that these exhibitions can also serve to meet this entirely separate criterion.

Finally, counsel listed that Art League, the Korean Fine Arts Association (which counsel characterizes as the oldest and most respected fine arts organization in Korea) and the Hong Ik Printmakers Association. The only exhibit referenced by counsel is a program listing the petitioner as an exhibitor at a Hong Ik Printmakers Association member exhibit. While this program may confirm the petitioner’s membership in this association, it does not demonstrate the requirements for membership.

The director did not address this criterion. On appeal, counsel reiterates previous assertions. We reiterate that 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. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The only associations in which the petitioner has documented membership is the Korean American Artists Association of the Greater Washington D.C., EWI and the Hong Ik Printmakers Association. The petitioner has not provided the bylaws or other official materials from any of the associations referenced by counsel to establish the exact membership criteria and selection process. Without such

documentation, the petitioner cannot establish that she meets this criterion. Thus, the petitioner has not provided the necessary initial evidence required to meet 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.

The petitioner submitted the abovementioned September 23, 2003 article in *Kyungin Ilbo* that noted the selection of the petitioner's artwork for the top honor prize at the 2003 Danwon Arts Competition Festival and the abovementioned September 2003 interview with the petitioner in *Misulsegae Magazine* following her selection for an award by that magazine. In addition, the petitioner submitted another longer piece about the petitioner in the June 2003 issue of *Misulsegae*, a review of the petitioner's artwork in a local Washington, D.C. based Korean newspaper and promotions of group exhibits including the petitioner's work in local Washington, D.C. based Korean newspapers. Finally, the petitioner submitted evidence that she is included on page 283 of a three volume collection of Korean artists entitled *Completion of Korean Art Overview*.

The director requested evidence of the circulation of any publication covering the petitioner or other evidence of why it is a major trade publication. In response, counsel reiterated the U.S. based Korean newspapers that have reviewed the petitioner's work or covered group exhibitions including the petitioner's work without providing any information as to why these local newspapers published in a language the majority of the population cannot comprehend are professional or major trade publications or other major media. Finally, counsel asserted that *Misulsegae Magazine* is a "very popular" and "renowned" art magazine in Korea. Counsel then concluded that inclusion in *Completion of Korean Art Overview* is "one of the highest honors for a contemporary artist."

The petitioner did not submit the requested circulation data or any other evidence to support counsel's assertions regarding the above publications. We reiterate that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner has not demonstrated that the Korean-language publications local to Washington, D.C. constitute professional or major trade journals or other major media. Moreover, the majority of these articles are promotions of group exhibits and cannot be considered published material "about" the petitioner. In addition, the inclusion of the petitioner as one of hundreds of artists in a three volume compendium of Korean artists with undocumented distribution carries less weight than independent journalistic coverage of the petitioner in professional or major trade journals or other major media. Finally, while the petitioner garnered some attention in the Korean media in 2003, this coverage predates the petition by five years and is not evidence of *sustained* national or international acclaim. Regardless, despite the director's explicit request for evidence of the Korean publications' circulation or other data indicative of the publication's status as a professional or major trade publication or other major media, the petitioner did not submit such evidence. It is the petitioner's burden to provide

evidence relating to every element of a given criterion, including that the published material appeared in professional or major trade journals or other major media. As the petitioner did not submit the initial required evidence for this criterion, the petitioner has not established that she meets it.

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

While the petitioner initially submitted letters providing general praise of her artwork, counsel did not initially assert that the petitioner meets this criterion. In response to the director's request for evidence, counsel asserted that the petitioner incorporates the principles of the five primary substances: Moon, fire, water, tree and metal. According to counsel, the petitioner uses deep etching and various tones of charcoal to create works that are described as "colorlessness." Counsel relied on samples of the petitioner's art and the review in *Misulsegae* as evidence to meet this criterion. The petitioner also submitted additional letters providing general praise of the petitioner's work.

We do not contest that the petitioner's artwork is original. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), however, 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. To be considered a contribution of major significance in the visual arts, it can be assumed that the contribution would have a demonstrable influence in the field.

The statute and regulations require evidence of sustained national or international acclaim. Thus, USCIS need not, and indeed does not have the expertise, to render a subjective opinion as to the significance of a particular piece of art.

While we will consider the opinions of experts in the field, letters from such experts cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 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 from experts supporting the petition 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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation are the most persuasive. Ultimately, evidence in existence prior to the preparation of

the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 2009 WL 2836453, *5 (9th Cir. 2009).

As stated above, the majority of the letters are from galleries that have displayed the petitioner's work or other close colleagues and provide general accolades of the petitioner's style and talent. Even where they broadly reference the petitioner's "impact," they do not provide specific examples of how the petitioner's contributions have influenced the field.

For example, [REDACTED] at the Bronx Museum of the Arts, states that the petitioner's work "beautifully manages and synthesizes Korean qualities of timeless serenity and understated strength with 'western' contemporary striving for innovation in technique and materials." [REDACTED] then states that the petitioner "has made an impact that cannot go unnoticed" and references the "unprecedented turnout" at the petitioner's exhibitions as evidence of her recognition and influence. We have already accepted that the petitioner meets the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). It does not follow that an artist who has successfully displayed her work has also influenced the field such that her work may be considered a contribution of major significance. Similarly, [REDACTED], an assistant professor of printmaking at Indiana University, asserts that the petitioner is the rare printmaker who knows how to utilize both acid and metal in etching. [REDACTED] does not, however, explain how this etching technique has influenced other printmakers at the national or international level. [REDACTED] Director of Gallery Satori in New York City, asserts that the petitioner's "colorlessness" style is "trend-setting." He does not, however, provide examples of artists that are following this trend and the record does not contain reviews of other artists commenting on those artists' use of the petitioner's style.

[REDACTED] of the Alexandria Commission for the Arts concludes only that the petitioner has influenced the local area of Alexandria, Virginia. Significantly, [REDACTED] a member of the Board of Directors of the Del Ray Artisans in Alexandria, Virginia, asserts only that the petitioner "can and will influence the creative world in the United States."

While the petitioner is a talented artist who has displayed her work at notable exhibitions and has successfully sold her work for private display, the record lacks evidence of her influence in the field at the national or international level such that she can be considered to have made contributions of major significance.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel did not initially assert that the petitioner meets this criterion. In response to the director's request for evidence, counsel asserted that the petitioner's exhibitions serve as evidence that she performed a leading or critical role for the entities sponsoring the exhibits. The director rejected this

assertion. On appeal, counsel asserts that the weight of the petitioner's solo exhibitions speak for themselves. While we concur with counsel that the petitioner's exhibitions were noteworthy, we have already concluded that the petitioner meets the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). We are not persuaded that evidence to meet that criterion must also be presumptive evidence to meet this unrelated criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three separate criteria. Only a major internationally recognized award can take the place of meeting three separate criteria. 8 C.F.R. § 204.5(h)(3). Counsel does not rely on any evidence other than the exhibitions to meet this criterion. As we are not persuaded that being an exhibitor is, in and of itself, a leading or critical role for the organizing entity as a whole, the petitioner has not demonstrated 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.

While counsel has never asserted that the petitioner meets this criterion, we note that the record contains letters confirming the price paid for various pieces of the petitioner's work. First, the petitioner had not established her personal share of the amount paid, which may include the gallery's share of the sales price or other overhead. Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence of high remuneration in relation to others in the field. The petitioner did not establish her annual income or how it compares with the most experienced and renowned visual artists in the United States where she has resided during the three years preceding the filing of the petition.

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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a visual artist 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 indicates that the petitioner shows talent as a visual artist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.