

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

B5

FILE: [REDACTED]
SRC 07 800 15211

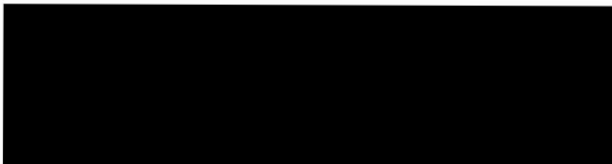
Office: TEXAS SERVICE CENTER Date: APR 29 2009

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts. The petitioner is an artist specializing in watercolor painting. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The sole ground for denial cited by the director is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on May 25, 2007. Counsel asserted that “there is no practicable mechanism” to apply the labor certification process to “a fine artist of watercolor” who has no permanent employer. This may be so, but it remains that the immigrant classification the petitioner has chosen to seek requires a job offer. Congress could have created a blanket exemption for aliens in the arts, but it did not. Instead, Congress specifically stated that the job offer requirement applies to aliens of exceptional ability in the arts, and is to be waived only when it is in the national interest to do so. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the

national interest to a substantially greater degree than do others in the same field. *Matter of New York State Dept. of Transportation* at 218 n.5.

Five witness letters accompanied the initial submission.
Institute of Culture and History, Belize City, Belize, stated:

President of the National

I had the opportunity to teach [the petitioner] at the Junior College level at the Belize Center for Art Education and Cultural Understanding. He took courses in graphic design, computer design and art history with me. His performance was outstanding and of a superior quality. . . .

In 2001 one of his designs won a national award and was selected to be made into a public sculpture. Today at one of the busiest intersections in Belize City, [the petitioner's] "The Visible Hand," stands for the public to continuously appreciate and admire.

[The petitioner] participated in several art exhibitions held at the Image Factory Art Foundation. Last year one of his works were [sic] selected among only twenty five to be exhibited in an exhibition titled "We Are Belize – 25 years of Independence" held in Kaohsiung, Taiwan.

Graduate Coordinator of the Painting Department at the Savannah (Georgia) College of Art and Design (SCAD), stated:

I was privileged to have [the petitioner] in my classes at the Savannah College of Art and Design. In terms of his natural talent as well as his capacity to learn, [the petitioner] is in the top one percent of those students I have taught in the last ten years. . . . [H]e has the innate ability to blend every technique he learned into his own style. . . .

[The petitioner] intentionally sought out challenging teachers and courses. . . . [The petitioner] created one of his best works at SCAD – "Gift," in which he showed maturity in the handling of oil media and paid attention to nuances that are beyond my expectation and course requirements. He also showed extraordinary composing ability. All of this is coming from a student who paints watercolor and has never painted oil painting before enrolling in our college. . . . [I]t amazed me how he applied knowledge he learned in oil painting classes to his watercolor, resulting in a nice mixture of western perspective and space with poetic eastern style that is full of lively brush strokes accompanied by calming atmosphere. . . .

He is a gem in today's art world because young artists nowadays tend to ignore fundamental[] discipline and think they can do any sort of conceptual or abstract work well without basic drawing skill.

stated:

[The petitioner] proved to be one of the most skilled applicants to our school, where he was accepted in 2003. I worked closely with him during the fall quarter of 2004 in an Intermediate Painting class and realized that he is . . . full of talent and artistic discipline. . . . The level of his skill and his discipline as an artist set him far ahead of his age group. . . .

On . . . [the petitioner's] first Open Studio Night, a biannual event when all the studios are open and displayed to the public, he maximized his opportunity and turned his own studio into a gallery, which helped him sell five paintings in a single night. It is unusual for an artist's work to sell so quickly, which attests to the public's interest in his work. . . . He graduated in 2006 receiving Outstanding Academic Achievement in Painting, and out of the 3 recipients, he was the only undergraduate. . . .

[The petitioner] stands out as one of the most talented artists in the community. The fact that he has a mixed cultural background [having emigrated from Taiwan to Belize when the petitioner was about 15]. . . makes him an artistic innovator who can blend styles to reach a unique product. . . .

[H]e has taught himself the art of watercolor and gleaned a great deal from exposure in China, which cannot be duplicated by a westerner. He is not afraid to experiment with new methods, which makes him a valuable asset to the world of watercolor. . . .

There are very few artists who have been met with such positive critical feedback at such an early time in their career. There is almost nobody who can duplicate his contribution in terms of his unique watercolor style, which is already gaining great attention, and the intercultural influence he brings to the art community.

the petitioner's academic advisor at SCAD, stated that the petitioner "stands out among the students who have recently completed the B.F.A. painting program at Savannah College of Art and Design. . . . [The petitioner's] natural talent is far ahead of his age group." After discussing the petitioner's various influences, stated that the petitioner "has the ability to turn mud into beauty. . . . This is what sets [the petitioner] apart from the rest. [The petitioner] has taken a leading role in the area of watercolor and has been recognized as one of the most talented individuals at this style."

The only initial witness not involved with the petitioner's undergraduate education is a watercolorist based in Frederick, Maryland who has corresponded with the petitioner but has not met him in person. stated:

Most impressive to me is that [the petitioner] has devoted himself to watercolor painting, and has shown great talent and potential in this endeavor. . . . It is especially exciting to

see [the petitioner] embrace the traditions of Chinese and [A]sian art, and combine them with the influences of his life in Belize, and his experience and education in the United States. He has melded all of these elements into a personal and original style of painting that is a welcome asset to the professional watercolor world.

In addition, [the petitioner] has taken it upon himself to share his already-considerable knowledge and ability with other aspiring artists by demonstrating his techniques on *YouTube.com*. This confirms a desire to help others, and an integrity that is further evidenced by his work as a volunteer.

The petitioner documented that he designed “The Visible Hand,” a sculpture donated by the government of Taiwan to the government of Belize on the 20th anniversary of the latter nation’s independence. The petitioner also provided one of 25 art works displayed in Taiwan on the 25th anniversary of Belize’s independence. The petitioner did not clearly explain how he came to be involved in these events, apart from his connection to both countries, much less how this participation establishes that it is in the national interest of the United States to facilitate his immigration.

The record documents the petitioner’s participation in various other shows and presentations. This evidence, however, does not distinguish the petitioner from countless other artists in the United States who seek to support themselves through artistic creations that reflect their training and personalities. A number of the petitioner’s own art teachers clearly hold him and his work in high regard, but it does not follow that the petitioner’s national impact as an artist elevates him above his peers and qualifies him for immigration benefits.

On May 13, 2008, the director issued a request for evidence (RFE), instructing the petitioner to submit further impact to establish his past impact on his field. The director noted that the petitioner “won a handful of comparatively modest awards,” and that most of the petitioner’s recognition took place at SCAD while he was a student there. In response, counsel asserted: “As shown in the evidence submitted with the original petition, [the petitioner] has made numerous major contributions in the field of fine art” and earned “exceptional commercial success.” The initial submission does not establish these points beyond dispute, as counsel contended. In terms of the petitioner’s “commercial success,” for instance, the initial submission only included a letter that contained the assertion that the petitioner sold five paintings for unspecified prices.

As further evidence of the petitioner’s claimed commercial success, the petitioner submitted copies of electronic mail messages from fewer than ten customers and potential customers who had purchased or inquired about the petitioner’s work through the online auction and sales site eBay (<http://www.ebay.com>). These messages contain positive opinions regarding the quality of the petitioner’s work, but this is hardly unusual. It can be assumed that people who do not like the petitioner’s art would not purchase it or express interest in doing so.

The petitioner submitted what counsel called “two (2) letters from experts in the field of artistry . . . who **recognize his invaluable contributions and unique and superior ability to capture the beauty over**

those working in his field and those with the same minimum qualifications to U.S. artistry” (counsel’s emphasis).

Art consultant [REDACTED] of Atlanta, Georgia, stated:

We were asked by a client to locate an artist that has the sensitivity and understanding of how beautiful New York City has been portrayed in the style of impressionism from earlier generations. . . .

Many artists paint this subject matter [*sic*] but [the petitioner’s] work is very different in many respects. He has the unique ability to capture the life and the energy and what lies behind the beauty of every scene he would portray. His impressionistic style is masterful in my opinion. . . . [The petitioner] is a world class painter. We will continue to show his work on any project that his subject matter and style of painting will compliment. . . .

It definitely was [the petitioner’s] work that our client focused on and chose for a part of their collection. It will probably include commissioning of several views of NYC that only his eye would uniquely see and capture.

[REDACTED] letter does not establish the petitioner’s impact or influence as an artist. Rather, it indicates that his painting style and choice of subject matter was a good match for a client with specific needs. It is not clear how this distinguishes the petitioner from other artists, unless we presume the superiority of art that impressionistically portrays New York City landscapes. Such a presumption is not justified.

The other letter submitted in response to the RFE is a second letter from the petitioner’s former art teacher [REDACTED] who stated:

In 2006, [the petitioner] was invited to represent Belize in an exhibition entitled, “We are Belize, held in Kaohsiung Museum of Fine Art. This museum is known for showcasing the best of art talents in Belize today.

The record reflects that Kaohsiung and Belize City are sister cities, which likely explains why a museum in Taiwan would regularly highlight art from Belize. [REDACTED] stated that the petitioner “sells, on average, more than 10 paintings a month, many within the United States. This shows his significant impact on American art lovers. . . . One particular group of works, the Central Park series, has been incredibly successful.” As with a number of claims in the record, the record lacks documentary evidence to support and flesh out [REDACTED] rather general claims.

The director denied the petition on August 28, 2008. The director stated that the petitioner’s documented prizes appear to be of minor importance, and that the petitioner’s most significant claims lack documentary support in the record. The director concluded that the petitioner is “a competent

artist” able to support himself through his “skills and abilities,” but “it has not been established that a job offer waiver based on national interest is warranted.”

On appeal, counsel argues that the director did not give sufficient consideration to the evidence and letters submitted previously, which (according to counsel) establish that the petitioner stands out from other artists and merits a national interest waiver. We have already discussed these materials above. Counsel asserts that the petitioner’s “most important work” is the design of “The Visible Hand” sculpture that stands in Belize City, and that the petitioner’s selection to design the sculpture is a mark of his impact and influence. The record, however, does not establish who selected the petitioner to make the design, or how the decision was made. Third-party assertions do not suffice as evidence in this regard. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In denying the petition, the director stated that the Google Scholar (<http://scholar.google.com>) search engine did not yield significant information about the petitioner. Counsel, on appeal, correctly observes that Google Scholar is a database relating to published research, rather than the arts, and therefore the database was an inappropriate reference tool for this proceeding. While the director erred in this regard, the decision as a whole does not indicate that the Google Scholar information was decisive to the outcome of the petition. If we excise the brief, erroneous reference to Google Scholar, there remains a defensible denial decision.

Counsel asserts “it is wrong for the Texas Service Center to dismiss the testimony of so many highly distinguished artists praising [the petitioner’s] contributions to his field.” The record does not establish the distinction of the petitioner’s witnesses. It does, however, establish that the great majority of witnesses are the petitioner’s own former art teachers. The evidence of the petitioner’s wider impact is minimal. The record contains references to “critical feedback” regarding the petitioner’s work, but the record does not contain any statement, published or otherwise, from any recognized art critic. The record shows that while the petitioner was under the tutelage of [REDACTED], the influential head of various arts organizations in Belize, the petitioner’s work was routinely featured in exhibitions and media coverage, but this attention ceased after the petitioner arrived in the United States. This pattern suggests that the petitioner’s early exposure was, to a large extent, the result of [REDACTED] influence in Belize.

The petitioner has established that he is a trained artist whose satisfied clients support his work through repeat business. He has also indicated that he provides art instruction, but the record does not show that the petitioner’s educational efforts have had an appreciable impact on art in the United States, either in terms of art style or educational methodology. Likewise, the petitioner has not demonstrated that his art stands out to such a degree that we can say it is in the national interest to ensure that he remains in the United States.

The above finding is, by itself, sufficient to warrant affirmation of the director's decision and dismissal of the appeal. Review of the record reveals an additional, independent basis for denial. 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).

Apart from the issue of the national interest waiver, the petitioner must establish eligibility for the underlying immigrant classification at section 203(b)(2) of the Act, either as an alien of exceptional ability in the sciences, arts or business, or as a member of the professions holding an advanced degree. In this proceeding, the petitioner claimed eligibility as an alien of exceptional ability in the arts, not as a member of the professions holding an advanced degree. Nevertheless, in the denial notice, the director stated: "The record establishes you hold a bachelor's degree in the department of painting from Savannah College of Art and Design (SCAD). You also have over five years of work experience in this field. Therefore, you are eligible for classification as a member of the professions holding an advanced degree." The director's finding is inconsistent with the statute and regulations. The regulation at 8 C.F.R. § 204.5(k)(2) provides the following pertinent definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

Section 101(a)(32) does not include "artist" in its list of occupations defined as "professions." Also, the record shows that the petitioner worked an artist before he received his bachelor's degree, which proves that such a degree was not the minimum requirement for entry into the occupation. The record, therefore, does not support a finding that the petitioner is a member of the professions.

Furthermore, the petitioner does not claim to hold any degree above a baccalaureate. The director noted the petitioner's "over five years of work experience," but the above regulatory definition requires that the five years of experience must follow the baccalaureate degree. Here, the petitioner received his bachelor's degree from SCAD in March 2006. Therefore, the petitioner could not possibly have had five years of post-baccalaureate experience as of the petition's filing date 14 months later in May 2007.

For the above reasons, the director erred in finding that the petitioner qualifies as a member of the professions with experience equivalent to an advanced degree. The AAO withdraws that finding.

We turn now to the petitioner's assertion that he qualifies as an alien of exceptional ability in the arts. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

Counsel has asserted that the petitioner satisfies four of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii):

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

The petitioner's bachelor's degree from SCAD, discussed above, appears to satisfy this criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

Noting "the sale of five of [the petitioner's] paintings in a single night," counsel asserted that the petitioner "has been remunerated for his artwork." The regulation, however, does not indicate that merely being paid for one's work is a hallmark of exceptional ability. It is difficult to imagine an "occupation" in which compensation is so rare that everyone who is paid for their work is "exceptional." Rather, the level of remuneration must reflect exceptional ability. In the case of artists who support themselves by selling their work, the work of an exceptional artist can generally be expected to command a higher price than a work of comparable scale and materials by a less talented artist. The petitioner's initial submission, however, provided no basis for comparison. Instead, the petitioner relied solely on a witness' assertion that the petitioner sold five paintings in one night. The petitioner did not submit financial documents, tax returns, or other evidence to establish his own earnings or how they compare to those of other watercolor artists.

One of the electronic mail messages submitted in response to the RFE indicated that one of the petitioner's paintings cost \$500. The record does not show the size of the work, or indicate the average price of a watercolor painting of similar size. The petitioner has not satisfied that his level of compensation demonstrates exceptional ability in the arts.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The petitioner claims membership in the American Watercolor Society. The only evidence presented as evidence of membership is a copy of a receipt dated April 12, 2007, indicating that the petitioner submitted "Sustaining Associate Membership" dues for the year ending May 31, 2008. Assuming that the society accepted these dues, the receipt would not document the petitioner's membership prior to June 1, 2007, and therefore even the most favorable interpretation of the dues receipt does not establish the petitioner's membership as of the May 25, 2007 filing date.

Also, the petitioner did not establish that society's membership requirements. If sustaining associate membership is open to anyone who pays dues, then such membership status says nothing about the petitioner's abilities, and carries no weight in this proceeding. The petitioner has not shown that only an artist with a level of expertise significantly above that normally encountered among watercolorists is able to produce a dues receipt of the kind reproduced in the record. The petitioner has not satisfied the regulatory requirement relating to membership in professional organizations.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F)

Counsel stated:

[The petitioner] has been the recipient of numerous awards in recognition of his achievements and significant contributions. For example, [the petitioner's] design of a 20-foot steel monument entitled "*The Visible Hand*" was selected by the Taiwanese government to be given as a gift to the country of Belize to commemorate Belize's 20th Anniversary of Independence. The Unveiling of *The Visible Hand* was [the] subject of prominent media coverage in Belize's Ministry of Work and television network Channel 5, and has also been made subject of a postcard. . . . As further evidence of his recognition, one of [the petitioner's] artwork[s] was selected among 25 pieces of art to be exhibited in the "*We Are Belize*" Exhibit celebrating 23 years of independence held in Kaohsiung, Taiwan. This exhibit was the source of extensive media coverage. . . . In addition, [the petitioner] was the recipient of the Artistic Honors Scholarship in the amount of \$5,000 per year granted by SCAD. In 2006, [the petitioner] was also recognized by SCAD and received the Outstanding Academic Achievement award in painting. . . . [The petitioner] was also selected to receive honorary award recognition in The National Dean's List for 2003/2004, which is "*the largest, most prestigious publication in the country recognizing gifted students selected by their deans, comparable faculty members or other educational organizations.*" Furthermore, [the petitioner] has received praise and recognition for his artwork by other highly accomplished fine artists.

(Emphasis in original; evidentiary citations omitted.) By regulation, qualifying recognition must come from peers, governmental entities, or professional or business organizations. Awards from educational

institutions for student work do not, therefore, appear to constitute qualifying recognition within the wording of the regulation. Regarding the other honors claimed by the petitioner, the burden is on the petitioner to establish that these honors were presented in recognition of achievements and significant contributions to his field.

The record verifies that the petitioner designed “The Visible Hand” sculpture, but the record is silent as to how the government of Taiwan came to use the petitioner’s design. If he was simply hired or commissioned to create the design, it is not clear how this is recognition rather than employment. Similarly, the record does not show how the art works were chosen for the 25th anniversary celebration of Belize’s independence.

Regarding counsel’s assertion that “The Visible Hand” “has also been made subject of a postcard,” the postcard in question was printed to promote an exhibition by the Image Factory Art Foundation, the entity (founded by [REDACTED]) that supervised the construction of the sculpture. The inclusion of an image of the sculpture in the foundation’s own promotional materials does not appear to amount to recognition for achievements or significant contributions.

Counsel asserted that the five initial witness letters (discussed elsewhere in this decision) are further evidence of recognition. The AAO, however, does not consider witness letters solicited to support the petition to constitute formal recognition, comparable to evidence produced as a result of the petitioner’s work in his field.

The petitioner has not persuasively established that he has received recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

For the above reasons, the petitioner has not submitted sufficient evidence to establish exceptional ability in the arts. Therefore, the petitioner has not demonstrated eligibility for the classification sought, and the petition cannot be approved.

On the basis of the evidence submitted, the petitioner has not established that he qualifies for classification as an alien of exceptional ability in the arts, or that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.