B2

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 99 196 50002 Office: Vermont Service Center Date: MAY 10 2001

IN RE: Petitioner: [redacted]
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)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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.

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.

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 Service 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.

The petitioner describes himself as "a painter, sculptor, author, translator, illustrator, film director, poet and actor." 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 petitioner does not specify which criteria he purports to have satisfied, but the evidence in the record appears to conform most closely to the following 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.*

[redacted], executive assistant of the Polish Institute of Arts and Sciences of America, states:

> [W]e believe that [the petitioner] is an artist of outstanding ability who has won critical acclaim. For this reason the Polish Institute has elected him for "regular" membership, which gives him the right to vote and hold office. The Polish Institute of Arts and Sciences of America, a prestigious organization, is a strong center of learning and culture concerned with advancing knowledge about Poland's humanistic heritage and about Polish-American contributions to life, culture, and history of the United States.

The record does not contain the institute's bylaws, constitution, or any other objective document to establish the institute's membership requirements, nor is there any indication that the institute enjoys significant recognition or prestige outside of the Polish-American community.

> *Published materials 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.*

Gdansk Coast Art published a review of one of the petitioner's art shows. Given its title, the publication appears to be local to the Gdansk area rather than nationally or internationally circulated.

Living Longer published an interview with the petitioner in which the petitioner describes his use of eye exercises to eliminate his need for eyeglasses. This article does not refer to the petitioner as a noted artist, although it does identify his occupation, and the article is not about the petitioner's work in the field. Rather, it is about his reliance on eye exercises which, the magazine admits, are "officially not accepted by medicine."

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

The petitioner lists various endeavors, artistic and otherwise, in which he has participated, ranging from illustrating and translating books to serving as a production assistant for a television documentary. Simply listing one's accomplishments does not establish their major significance in the field. For example, with regard to the petitioner's work in films, there is a considerable number of independent film producers, ranging from students and amateurs to highly respected producers who simply wish to avoid corporate entanglements. Therefore, simply establishing that one took part in the production of a film documentary does not satisfy this criterion; not every film, or book, or painting is an original artistic contribution of major significance.

The petitioner must show that his work in film, the visual arts, publishing, and so on have consistently garnered him substantial recognition among his peers, critics, and/or the public. Several of the petitioner's works, such as unproduced screenplays, are at the embryonic stage at best and have not yet had the opportunity to garner significant acclaim for the petitioner.

Among the petitioner's more noteworthy claims are his assertion that his book, Bad Words Dictionary, "has sold over 350,000 copies in Europe" and "over 10,000 copies" in the United States, and that the Asia Society in New York has sold over 3,500 of the petitioner's mandala sculptures. Regarding the latter claim, letters from the Asia Society indicate that the society has "purchased approximately 1,800 mandala sculptures created by" the petitioner, and that "during the recent holiday season we sold over 1,000 mandala sculptures." There is no direct source for the oft-quoted figure of "over 3,500" sculptures sold.

The petitioner's Bad Words Dictionary appears to represent research rather than artistic creation, because he compiled and translated existing phrases into what is essentially a reference work.

The petitioner submits a substantial quantity of letters from various witnesses, ranging from publishers to college professors to orchestra conductors. These witnesses list the petitioner's accomplishments but they do not establish that the petitioner is, nationally or internationally, among the best known individuals in any given artistic field. Some of these witnesses, in describing their own careers, list achievements which dwarf those claimed by the petitioner. Many of these witnesses have long-standing ties to the petitioner, and/or have worked with him closely in some capacity. Several of the letters contain identically-worded passages, which suggests common authorship. For example, a number of letters contain the passage "[the petitioner] is truly a

Renaissance man. His extraordinary artistic gifts and inventiveness have allowed him to contribute to the cultural heritage and traditions of Poland." Some of the letters are so similarly worded as to be virtually indistinguishable apart from their introductory paragraphs.

The structure of the regulations illustrates the Service's strong preference for verifiable, documentary evidence, rather than subjective opinions from witnesses selected by the petitioner.

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

The petitioner asserts that his paintings and sculptures "have appeared in galleries throughout Europe and the USA." The petitioner lists several galleries, mostly in New York and Poland, and specifies how many works of art he sold at each venue. The petitioner does not indicate that his works have ever been displayed for the sole purpose of public viewing (such as a museum show) rather than to facilitate their sale.

Several gallery owners attest that they have sold the petitioner's paintings and sculptures, but they do not indicate that the works command record prices or that the petitioner is nationally or internationally recognized as a top artist. There is nothing inherently extraordinary about selling one's art work in a gallery; such sales would appear to be one of the primary means through which artists earn a living.

The director denied the petition, stating that the petitioner has failed to document the acclaim which the law requires for this extremely restrictive visa classification. Much of counsel's appeal brief is simply another reiteration of the petitioner's list of accomplishments with no objective indication of the importance of the petitioner's contributions. Several of these assertions omit critical information supplied by the record. For instance, counsel notes that the petitioner "submitted a television pilot to HBO." Counsel fails to add, though the record plainly shows it, that HBO rejected the pilot. Simply preparing a pilot is a matter of logistics and financing; the very existence of the pilot is not in any way an indicator of extraordinary ability, and it is difficult to conceive how the petitioner could derive any measure of acclaim from the pilot if it was rejected and thus never broadcast, let alone developed into a series. The creators of the HBO series The Sopranos are well-known not because they suggested a program to HBO, but because HBO actually signed on to the series, and record audiences watch the show.

On appeal, counsel protests the director's characterization of the witness letters as "cookie-cutter" form letters. Nevertheless, many of these letters do indisputably share the majority of their

language. Counsel asserts that "[t]he fact that each letter reiterates [the petitioner's] background should be taken as a sign that [the petitioner's] background is well known and should not be viewed as lessening the value of the testimonial." The director's objection was not the writers' shared familiarity with the petitioner's background, but the use of exactly the same wording to describe that background, in letter after letter. Given the incalculable odds against so many people writing the same letter independently, we must presume that one unidentified author wrote the bulk of the letters, which in turn were then signed by their putative authors.

Counsel asserts that the letters are from "experts involved in the artistic and academic communities," best qualified to comment on the merit of the petitioner's work. At the same time, we cannot ignore that these witnesses are individuals who have worked closely with the petitioner; their statements do not show that the petitioner has earned a lasting reputation at a national or international level, which must necessarily extend beyond his own circle of clients and collaborators.

The director noted the petitioner's sales of 350,000 copies of Bad Words Dictionary, but questioned the significance of this figure. On appeal, the petitioner submits a letter from author Jonathan Harrington, who states that this volume of sales "is a remarkable sales record for a book of this kind," and that (according to amazon.com) the book outsells other titles of its kind. The petitioner also submits documentation from Publishers Weekly showing that books become best-sellers with fewer sales than the petitioner's book, although the record does not indicate how long the petitioner's book took to reach the quoted sales figure.

Certainly the petitioner's Bad Words Dictionary has enjoyed considerable success in Europe (its U.S. sales figures represent less than three percent of the European sales total). But a one-time success of this kind does not demonstrate sustained acclaim, which the plain wording of the statute demands. Also, the success of a reference book written - or, more accurately, compiled and edited -by the petitioner says nothing at all about his reputation as an actor, painter, sculptor, poet, or film director. Section 203(b)(1)(A)(ii) of the Act requires that "the alien seeks to enter the United States to continue work in the area of extraordinary ability." In this instance, Bad Words Dictionary represents the closest the petitioner has come to meeting the extraordinary ability threshold, but the petitioner has not established that his future efforts will center on further reference books of this kind. Rather, he intends to work as a painter, sculptor, and writer of fiction, poetry and screenplays, none of which are in a comparable field to his assembly of Bad Words Dictionary (notwithstanding the petitioner's so far unsuccessful efforts to turn a reference book into a motion picture). The petitioner's creation of a successful

reference work is insufficient to support the many totally unrelated claims which the petitioner has made in support of his 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, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself in the arts 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. The evidence indicates that the petitioner has had some degree of success in several different avenues of artistic expression, but is not persuasive that the petitioner's achievements in any one of those fields set him significantly above almost all others in those fields. 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.