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U.S. Citizenship
and Immigration
Services

[redacted]

B2

JAN 27 2004

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (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.

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 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. 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.

With the petition, counsel did not specify which of the criteria petitioner believed he had met. The petitioner initially submitted his curriculum vitae; samples of his work; evidence that he had participated in an art festival; letters and e-mails of recommendation, reference and appreciation; a letter from the Entertainment Editor of *El Dia Newspaper* confirming the paper had published an article about the petitioner; two letters from the petitioner, one to the Executive Director of the Institute Cultural (sic) of Mexico in Houston expressing his appreciation for her efforts in arranging a meeting with a local high school principal to discuss

teaching history through muralism, and one to an individual stating his interest in participating in a mural program; and evidence that the petitioner was opening a business in Houston.

In a request for evidence (RFE) dated January 22, 2002, the director requested evidence that the petitioner met at least three of the criteria listed in 8 C.F.R. § 204.5(h)(3) and evidence that the petitioner's work would significantly benefit the United States. In response, counsel submitted a letter identifying 22 different items of documentary evidence she was submitting in support of the petitioner's claim. Among the items listed were a DVD including footage of the petitioner being interviewed and "videos showing interview, paints, shows and murals" done by the petitioner.

In a Notice of Intent to Deny dated June 27, 2002, the director informed the petitioner that the evidence presented did not demonstrate that the petitioner met the requirements to receive visa preference as an alien of extraordinary ability. The director noted that the evidence presented either did not identify the petitioner as being the author of the work presented or was submitted in a form that was not accessible to the adjudicating officer. The petitioner was given 30 days in which to submit acceptable evidence to support his petition, including critical acclaim of his work from curators of art museums or in magazines, and newspaper articles about the petitioner's work. In response, counsel requested an additional 30 days in which to put the information contained on the video and DVD into photographic form.

On appeal, counsel states that the petitioner has submitted evidence that he meets "nearly all of the listed items" of 8 C.F.R. § 204.5(h)(3), and that she "feared that the adjudicator either did not review the second submission, since it is not mentioned in the decision, or perhaps does not recognize the significance and value of the muralist tradition in the art world." In addition to the evidence noted above as being submitted with the petition, the record contains three videotapes, a DVD and four small spiral binders on "Murals", "Wharton Elementary School", and the petitioner "teaching Art Visual class at the Mexican Communities Abroad Art Program", and the petitioner's "Decorations of Downtown Houston." Counsel referenced these items at number 22 in her response to the RFE. No other evidence, including the items listed 1 through 21 of counsel's response to the RFE, appears in the record.

On the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, counsel indicates she will be submitting a brief and/or evidence to the AAO. In the attached statement, counsel also states she will provide a "complete duplicate of both voluminous filings of supporting documentation" within 30 days of filing the notice of appeal. No additional evidence has been received by the AAO as of the date of this decision, more than a year after the appeal was filed.

The evidence of record does not establish that the petitioner has met any of the criteria listed in the regulation. We specifically considered the following criteria, for which some evidence appears in the record.

> *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.*

Secured to the video tapes are what appear to be excerpts or translations of interviews of the petitioner for Univision and the Monitor, but the dates or other identifying evidence of the interviews are not included. A statement by the Entertainment Editor of *El Dia* indicates that an article about the petitioner has appeared in that newspaper. The record does not contain the article or the date on which the article was published. *El Dia*

describes itself as "The First Spanish Daily Newspaper in Texas." Generally, in order to meet this criterion, published materials must 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. There is no evidence that *El Dia*, Univision or the Monitor qualify as major media.

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

The petitioner's résumé references numerous art exhibits in which he presented work. However, no other evidence of these exhibitions appear in the record. The evidence of record shows the petitioner's work was featured as part of an art festival held in Texas City, Texas. Participation in a local or regional exhibit does not reflect the petitioner's national or international acclaim. The owner of the Brownstone Gallery in Houston, Texas, submitted a letter which states the writer is aware of shows the petitioner has presented in several countries. A letter bearing the letterhead of Machorro Gallery, Inc. of Houston, Texas also states the petitioner has exhibited his work internationally. These statements, without supporting evidence from or about the international exhibitions are insufficient to establish the "extensive documentation" required by this criterion. It is difficult to determine if the letter from the Machorro Gallery is signed, and if so, by whom. It states that the petitioner's work was displayed in the gallery from November 1999 to February 2000. Without being able to ascribe a name or position to the writer of this letter, we find this letter lacks credibility. The record does not establish that the petitioner has met this criterion.

On appeal, counsel states that under 8 C.F.R. § 204.5(h)(4), the petitioner may submit comparable evidence if the enumerated standards do not readily apply to a field of endeavor. Counsel has not shown that the enumerated standards do not apply to the petitioner's work, and no "comparable" evidence is reflected in the record.

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 himself as an artist 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 is a talented artist but is not persuasive that the his achievements set him significantly above almost all others in 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.