U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

B2

MAR 0 2 2004

FILE: [redacted] Office: CALIFORNIA 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, California Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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.

As a preliminary matter, we note that the translations of documents submitted in support of this petition do not identify the translator and fail to comply with 8 C.F.R. § 103.2(b)(3), which requires the translator to

certify that the translation is complete and accurate and to certify as to his or her competency to translate the documents. The petitioner has submitted evidence that, he claims, meets the following criteria.[1]

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

The petitioner claims to have won several nationally recognized prizes and awards at various packing exhibitions for his packing designs. As evidence he submitted photocopies of product packing designs accompanied by statements that the designs won various awards for excellence at particular packing exhibitions. The uncertified translations of the letters of recommendation submitted in support of the petition also reference the awards the petitioner won, as do the uncertified translations of the petitioner's biography in the anthologies *World Famous Chinese Writers and Artists* and *Large International Interchange Series Who's Who in the World-China*. The petitioner submits no primary evidence of these awards, such as certificates, trophies, medals or acknowledgements from the sponsors. Nor does he submit evidence of the significance of these prizes, the selection criteria or any other evidence that the prizes are nationally recognized. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also submits evidence of having designed a souvenir plate that won a certificate of honor from [redacted] and [redacted] Memorials. The uncertified translation of this certificate states that the petitioner designed the plate, that it is of a novel style and has been well received. The petitioner also states he designed a set of badges and souvenir plates in memory of the Pinjin Campaign, a "decisive victory for the foundation of the People's Republic of China." The uncertified letter submitted as evidence simply thanks the petitioner for designing the souvenirs at no charge. The evidence does not establish that either the certificate or the letter of appreciation is a nationally or internationally recognized award or prize.

On appeal, counsel submits several letters notifying the petitioner of his selection for inclusion in various biographical encyclopedia and dictionaries. Counsel asserts that the petitioner's inclusion in these types of biographical collections is evidence that he meets this criterion. However, inclusion in an anthology is not a prize or an award within the meaning of this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In response to the director's request for evidence (RFE) dated February 24, 2003, the petitioner claims to meet this criterion based on his position as a council member of the Decoration and Design Society of China Industrial Arts Association, as a council member of the Tianjin Workers Fine Arts Society, and as a member of the Natural Science Society of China Science and Technology Association. He submitted copies of his membership cards in these associations.

---

[1] The petitioner is represented by different counsel on appeal. While there is some overlap, appellate counsel and prior counsel do not address the same criteria the petitioner claims to meet. On appeal, we will consider the arguments raised by both counsel during the course of the proceedings.

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion, as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

Counsel states that the evidence submitted with the appeal prove that the named associations "require rigid standards to join . . .[s]pecifically, the publication information, the confirmation of the organizations conferring accolades on [the petitioner] and the letters from colleagues clearly show the high standards required for the admission into such societies." No evidence presented by counsel proves that these associations require outstanding achievements for membership. No evidence of record establishes that the petitioner meets this criterion.

In his cover letter responding to the RFE, the petitioner's previous counsel outlined the requirements to become a member of the Decoration and Design Society, which he stated to include having been published and passing two years' assessment. However, no documentary evidence of these requirements was submitted. The assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

> *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.*

On appeal, the petitioner does not claim to meet this criterion. In his cover letter accompanying the petition, however, prior counsel stated that the petitioner's contributions to the field of industrial art designing had been widely reported. He further asserts that the petitioner's inclusion in the books *World Famous Chinese Writers and Artists*, *Who's Who in the World-China* and *Chinese Successful Personage* is also evidence of the petitioner meeting this criterion.

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

No evidence of media attention was included with the petition. In his RFE, the director requested evidence of the published material that "widely" reported on the petitioner. However, the petitioner submitted no new evidence, either in response to the RFE or on appeal. The listings in the various encyclopedia and anthologies are not published material about the petitioner. The petitioner's biography is only one of thousands of others listed, and his achievements are not singled out above those of others who also appear in the anthologies. Additionally, the biographies appearing in such publications are generally submitted or approved by the subject and are not objective and independent assessments of the individuals or their work. The evidence does not establish that these anthologies are major media or major trade publications, or that the biographies constitute published materials about the alien or his work within the meaning of this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

While claiming on appeal that he meets this criterion, the petitioner fails to identify the specific evidence that establishes this claim. Two letters of recommendation reference the petitioner's work as "judge" of the work of others. The first is from Ms. who states that she and the petitioner were colleagues and partners for many years, presumably at the Tianjin Foreign Trade Packaging Research Center. She describes him as a "great teacher" and states that he "used to be the Art Technique title judge in the system, with giving many valuable art experience to the new art talents [sic]." No other evidence was submitted regarding the petitioner's position as art technique title judge. However, the title indicates that evaluating the artwork of others was part of the petitioner's job responsibility. This does not indicate that he was selected to serve as a judge due to his national or international standing or recognized ability. The second letter is from Mingliang Wang, who appears to be associated with the *Who's Who* encyclopedia. She states that the petitioner became the executive consultant and editor for the book (an apparent reference to *Literature and Art*). Since neither of these statements is accompanied by a certified translation, they are of little value in this proceeding. Furthermore, no other evidence in the record supports either of the statements. There is no indication from the publisher of the book that the petitioner was selected to serve as editor or describing the scope of such duties. The evidence does not establish that the petitioner meets this criterion.

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

The petitioner does not specifically claim to meet this criterion. However, in his cover letter accompanying the petition, counsel refers to the petitioner's "outstanding contributions to the field" of industrial art and art design. The director noted that the petitioner did not indicate exactly what those contributions were and the significance they had in the field.

The petitioner submits several letters attesting to his accomplishments; however, a review of the documents reveals them as no more than letters of reference from friends and acquaintances. Mr Vice-President of the Tianjin Academy of Fine Arts, and a member of the China Artists Association and China Industrial Art Designers Association, states that the petitioner made "outstanding contributions to the society in the long-term development of painting and industrial art designing." No specific contributions are identified. The same deficiency is noted in the letter from Mr. former director in the Tianjin Academy of Fine Arts and a member of the China Artists Association, who states that the petitioner has made "outstanding contributions in the area of painting and industry art designing." Although listing the petitioner's accomplishments, Mr does not detail how they are "outstanding" contributions to art. The letter from Mr. president of the Global Multi-Culture Exchange Organization, also speaks of the petitioner's contributions in general terms.

Counsel asserts that the petitioner's inclusion in the various biographical encyclopedia and anthologies is conclusive evidence of his sustained national acclaim. However, the criteria for selecting the individuals for inclusion in these books are general at best. The uncertified translation of the "World Person Press" regarding the 10th edition of *Who's Who*, for example, states that the requirements for selection for that encyclopedia are based on the individual's "unique knowledge and achievements in one profession: people who [are] granted the awards from the level of province, nation, and world, people who were reported by the major medias and Newspapers." No specific achievement or original contribution of major significance is required. Similar

general requirements are reported for the *Chinese and Foreign Celebrities Dictionary*. No evidence is presented regarding selection requirements for the other anthologies.

Ms. the petitioner's former co-worker, states the petitioner made "outstanding contributions in his work" at the Tianjin Foreign Trade Packaging Research Center. However, her list of the petitioner's accomplishments fails to establish that either one particular achievement or the entire list constituted an "outstanding contribution," particularly to the field of art. The petitioner has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner states that he has published a book entitled *Artistic Calligraphy in Foreign Languages*, has designed and drawn illustrations for the 1979 Volume *Literature and Art*, and that his paintings were widely published in the *Tianjin Daily*, which has a circulation of 300,000. As evidence, the petitioner submitted what appear to be copies of the front covers of both books. The copy of the book cover on calligraphy, which is in Chinese, includes a statement that the petitioner authored the academic reference book, named the publishing company and indicated the book's circulation record. The photocopy of the cover of the literature volume also contains a statement that the petitioner designed and drew illustrations for the volume. This is followed by several pages written in Chinese and featuring several drawings. No other indication that the petitioner wrote the book on calligraphy or made the drawings appears in the record. Simply going on record without supporting documentary evidence is not sufficient for the purpose of of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the drawings are not "scholarly articles" as required by this criterion.

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

In his letter in response to the RFE, prior counsel states that the petitioner's work is on display at the China Merchandizes Packing Research Institute, whose show room is open to the public on a regular basis. No evidence to support this statement was submitted. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Additionally, the display of product packing at the institute would not satisfy this criterion, as it appears more to showcase the company's products rather than the petitioner's.

The exhibitions at which the petitioner states he won certificates of excellence were apparently trade exhibitions rather than artistic exhibitions. The evidence submitted with the appeal suggests that the petitioner has been requested to submit samples of his work to be included in a couple of the anthologies; however, publication in an anthology is not an exhibition or showcase as required by this criterion. Ms and Mr. also suggest that the petitioner participated in several exhibitions, but no details of the exhibitions appear in the record. No evidence of record establishes that the petitioner meets this criterion.

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

In his cover letter submitted with the petition, prior counsel states that the petitioner meets this criterion based on his membership in the Tianjin Workers Fine Arts Society and the Natural Science Society of China

Science and Technology Association. He submits no evidence of the petitioner's role in these organizations other than his membership cards. Counsel also submits no evidence to establish that these organizations enjoy a distinguished reputation.

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

Review of the record, however, does not establish that the petitioner has distinguished himself 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 an accomplished artist, but is not persuasive that the petitioner's 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.