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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC-03-072-52821 Office: CALIFORNIA SERVICE CENTER Date: MAR 31 2004

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)

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) has approved similar petitions for other individuals. Each petition is judged on a case-by-case basis based on the record of proceedings. Decisions made in other petitions, other than precedent decisions issued by this office, are irrelevant. Counsel's remaining arguments will be discussed below.

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 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 a painter/graphic 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. The petitioner has submitted evidence that, he claims, meets the following criteria.

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

The petitioner received an honorable mention at the North County Society of Fine Arts Fourth Open Juried Art Exhibition in Poway, California. The petitioner's mentor at the University of the Philippines, Ruben Defeo, asserts that this was a national competition and that among the 280 artworks submitted, only 120 were chosen to compete. In response to the director's request for additional documentation, the petitioner submitted a third place ribbon from the society, but no evidence that the ribbon was awarded to the petitioner prior to the date of filing. The petitioner was also a finalist at the Shell 24th National Student Art Competition in Quezon City, the Philippines.

The director characterized these competitions as "local or regional" on page seven of his decision. Counsel does not challenge this assertion on appeal and we concur with the director insofar as the record lacks evidence of the significance of the competitions. Moreover, we cannot conclude that being a finalist or receiving an honorable mention is an award or prize. As stated above, the petitioner has not established that he received third prize prior to the date of filing. Thus, it is not evidence of his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

> *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 additional documentation, which specifically requested evidence of the membership requirements for any of the associations of which the petitioner is a member, the petitioner submitted evidence relating to this criterion. In a letter postmarked October 6, 2003, Dennis Batt, Past-President of the San Diego Museum of Art Artists Guild invites the petitioner to join the guild after being nominated by at least one member. Mr. Batt explains that the guild admits new members only after "jurying in new members based on their professional experience and the quality of their work." Mr. Batt indicates that the guild is seeking to expand so that it can serve its 1500 members in the San Diego County and Baja California Norte areas. A final decision on membership, however, would be reached only after receipt of five slides of the petitioner's work and his resume and a discussion among current members culminating in a vote.

The petitioner also submitted a 2003-2004 membership directory for the North County Society of Fine Arts. The directory does list the petitioner, although he is listed at the end out of alphabetical order. In addition, the petitioner submitted a handwritten welcome card from the Membership Chair of the society.

Also in response to the director's request for additional documentation, the petitioner submitted an undated letter from Natalie Gains, Production Manager for Book Art Press. She advises the petitioner that his work has been selected to appear in the 2003-2004 edition of *New Art International*. She offers the petitioner half-page, one page, or two page "membership" options.

Finally, the petitioner submitted a September 13, 2003 letter welcoming the petitioner as a member of the Clairemont Art Guild.

While the director did not specifically address this criterion in his final decision other than to acknowledge the letter from Mr. Batt, the director did conclude on page seven of the decision that the petitioner did not meet any of the criteria. The director further concluded that the petitioner "did not submit qualifying evidence to establish the significance of the items claimed" on page six of the decision.

Counsel does not address this criterion on appeal. It is not clear that the petitioner was a member of any of the above associations as of the date of filing. As stated above, the petitioner must establish eligibility as of that date. Moreover, the above letters are not persuasive. While the Book Art Press letter references "membership," it is not clear that purchasing space in a publication is akin to membership in an association. In addition, the record does not satisfactorily establish that any of the remaining associations require outstanding achievements in the field or that recognized national or international experts in the field judge the achievements of prospective members. While some evaluation of an artist's accomplishments is undertaken for membership in the San Diego Museum of Art Artists Guild, it is not clear that the accomplishments must be outstanding achievements in the field. Moreover, the associations all appear to be local; thus, it is not clear that nationally recognized experts judge prospective members.

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.

The petitioner submitted a promotional news article about his Living Room Café exhibition published in the *Philippine Mabuhay News* in 2002, a 1995 article in *Today* about an exhibition of art by six graduates of the University of the Philippines that mentions the petitioner, a 1996 article in *ISYU* also about an exhibition of art by six graduates of the University of the Philippines.

On page nine of his decision, the director concluded that the petitioner had not established the significance of the articles about his work in the field on a national or international level.

On appeal, counsel notes that the petitioner was an editorial cartoonist for *ISYU*, asserting that it has national circulation in the Philippines and even some international circulation. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Regardless, the petitioner's editorial cartoons do not constitute published materials *about* the petitioner. The 1996 article in *ISYU* is about an event where six artists displayed their work, and not the petitioner personally.

The petitioner submits numerous issues of *Asia* that contain the petitioner's work and even articles about the petitioner. The issues are all dated after the date of filing. Counsel notes that *Asia* is San Diego's only newspaper for and about the entire Asian and Pacific Islander community. This information appears in the logo of the paper. It remains, the paper has a local circulation and cannot establish the petitioner's claimed national or international acclaim.

The record includes a video of a story about the petitioner broadcast on Asia Media. The petitioner has submitted no evidence that this episode was broadcast nationally. A review of the video suggests that the program is local.

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

Professor Defeo discusses the petitioner's painting that received an honorable mention at the North County Society of Fine Arts competition as follows:

> The technique used is based on collagraph wherein the plate is the artwork itself and not simply a device to work out the process. The innovative technique has been a standing artistic concern of [the petitioner] for years now and it is comfortable to aver that he has already achieved remarkable strides in its development, honing it to some degree of perfection and opening to myriad potentials of application.

In response to the director's request for additional documentation, the petitioner submitted letters praising his abilities and dedication to Filipino heritage. Congressman Bob Filner confirms that he met with the petitioner "concerning your request for assistance." The Senior Vice President for the Talent Development and Management Center at ABS-CBN in the Philippines provides general praise of the petitioner's work. The Retail Manager of the Polynesian Cultural Center in Hawaii expresses appreciation for the samples sent by the petitioner and inviting the petitioner to send pieces to display and sell at the center.

The former Mayor of Angeles City and present General Manager of the National Housing Authority in Quezon City commends the petitioner's "effort to bring into the world the artistic capability of the Pampangenos not only in the Philippines but abroad as well." A member of the Philippine House of the Representatives also commends the petitioner "for his grand effort to recognize, enrich and capture in his art works his Filipino heritage, which was further enhanced by his experiences in world art, as may be gleaned from his recent works which is currently showcased in Pampanga Online."

Most of the director's decision addresses this criterion. The director determined that the petitioner's references were, for the most part, not experts in the field. On page eight of the decision the director concluded that the petitioner had not demonstrated that he was "primarily responsible for major achievements in the field."

On appeal, counsel asserts that the petitioner's attempts to obtain letters from national arts organizations were unsuccessful due to the policies of those organizations. Counsel notes that the petitioner submitted letters from distinguished artist Ruben Defeo and submits on appeal a letter from Joanne Tawfilis, Executive Director of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

While the record does include the letter from Mr. Defeo, the letter is not an independent evaluation of the petitioner's contributions to the field. Mr. Defeo was the petitioner's mentor at the University of the Philippines. Moreover, he does not explain how the petitioner has contributed to the art world in either the Philippines or the United States such that we can conclude the petitioner has made a contribution of major significance. While the petitioner's technique may be innovative, the record contains no evidence that this technique has been recognized and become influential in the art world generally.

The appellate letter from Ms. Tawfilis is not persuasive. While UNESCO may be international, counsel mischaracterizes Ms. Tawfilis' title. She is actually the Co-Founder and Director of the Art Miles Mural Project in California, a project that has been adopted by UNESCO. She acknowledges that she has worked with the petitioner as a volunteer with the project. Thus, her letter is not an independent evaluation.

The arguments and documents submitted on appeal are not persuasive. While we acknowledge that the director specifically requested an advisory opinion, such opinions cannot form the cornerstone of a successful petition. Evidence in existence prior to the preparation of the petition is more persuasive than solicited evidence in support of the petition. The record contains no objective evidence of the petitioner's influence on the field, such as scholarly analyses of his technique published on a national scale. Moreover, the most persuasive advisory

opinions are from experts in the field who, while not having a personal connection to the petitioner, were aware of his position in the field prior to being contacted for a reference based on his reputation in the field. The record contains no such opinions.

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

The petitioner initially submitted an agreement for a gallery exhibition whereby the petitioner would pay $150 for gallery space two months after the petition was filed. A letter dated December 12, 2002 raises the possibility of the petitioner exhibiting his work at a Las Vegas convention for which he was hired to design the logo, invitation and collateral materials. A December 12, 2002 letter invites the petitioner to display his work at a Filipino-American Chamber of Commerce charity event at the Bristol Hotel ballroom in California.

The record also contains evidence of exhibitions that had already occurred as of the date of filing. Specifically, the petitioner displayed his paintings at the Living Room Café in Old Town, California on October 12, 2002; the Los Angeles 11th Annual Festival of the Philippine Arts and Culture in San Pedro, California on September 7 and 8, 2002; the Philippine Center in New York for one month in 2001 (requiring a $100 rental fee); Balboa Park in San Diego, California on August 3 and 4, 2002; an unidentified gallery in San Diego on August 25, 2001; Freedom Bar in an unidentified city on June 11, 1998; and earlier exhibits in Mandaluyong City, Quezon City, Makati City and Manila in the Philippines.

The ABS-CBN Broadcasting Corporation in the Philippines, the University of the Philippines, America Online and an attorney in San Diego have commissioned the petitioner's paintings. The petitioner has also painted portraits for individuals. The record contains a few editorial cartoons published in *ISYU* in 1995.

The petitioner's artwork appears for sale on the Internet at www.monsoonimages.com sponsored by Monsoon Images and www.communityline.sdinsider.com sponsored by the North County Society of Fine Arts.

Subsequent to the date of filing, the petitioner's work was displayed at the Cedar Key Arts Center as part of their first national juried exhibit. While prizes were awarded, the petitioner did not receive any. The petitioner's work was also accepted for display on the Internet at www.pampanga-online.com, the website of Pixelwise Multimedia in the Philippines. The record does not establish when this occurred. The petitioner accepted an invitation to donate work to a University of California, San Diego Filipino student group's silent auction. The petitioner also submitted promotional materials for other local exhibitions after the date of filing.

The director noted on page seven of his decision that "many artists have local and regional exhibits at local and regional events" and concluded on page nine of his decision that the petitioner had not demonstrated the significance of the events where his work was displayed. On appeal, the petitioner submits evidence that the American Federation of Artist exhibitions are open only to member museums. The record does not explain how this information demonstrates the significance of the exhibitions where the petitioner displayed his work prior to the date of filing. We concur with the director that the record lacks evidence that the petitioner has displayed his work at exclusive artistic exhibitions or showcases at which the most experienced and expert artists aspire to show their work.

Finally, the walls of ABS-CBN's office building as well as the walls of other clients are not artistic exhibitions or showcases.

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

The petitioner submitted a December 12, 2002 letter from the Sigma Kappa Pi Fraternity – Sigma Delta Pi Sorority regarding their 2003 international convention in Las Vegas. The letter confirms that the petitioner will be responsible for creating their logo, invitation and collateral materials with the possibility of an exhibition. A December 9, 2002 letter from Monsoon Images discusses a proposal for the petitioner to prepare images of Philippine art for display on their website.

As stated above, the ABS-CBN Broadcasting Corporation in the Philippines, the University of the Philippines, America Online and an attorney in San Diego have commissioned the petitioner's paintings. The petitioner has also painted portraits for individuals. As a graphic artist, the petitioner has designed promotional materials for Asian restaurants and conventions in San Diego. The petitioner has also designed posters and tickets for movies and events in the Philippines, as well as promotional materials Filipino businesses. Finally, the petitioner has published editorial cartoons in *ISYU*

The director concluded on page seven of his decision that the petitioner had not established the significance of "his performance in a leading role for organizations with a distinguished reputation."

On appeal, counsel asserts that ABS-CBN broadcasts internationally and that *ISYU* has a national circulation. The petitioner submits materials regarding ABS-CBN.

The record does not establish that the petitioner's murals, which appear from the photographs submitted to be outside the actual broadcast studio itself, were broadcast internationally. Regardless, we cannot conclude that a mural painter and an editorial cartoonist play a leading or critical role for a broadcast company and newspaper. Moreover, a petitioner must establish sustained acclaim. Thus, the petitioner would need to demonstrate acclaim up until the date of filing. The petitioner painted the murals and drew editorial cartoons years before filing the petition.

Finally, while the petitioner has obtained work as a graphic artist, we cannot conclude that merely providing graphic design services for an organization is a leading or critical role for that organization. The record also contains little evidence regarding the national reputation of the organizations for which the petitioner has performed graphic arts services. Finally, we note that merely being able to find work in one's field is not evidence of national or international acclaim.

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 a painter/graphic 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 shows talent as a painter/graphic 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.