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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 06 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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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.

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 pertinent regulations 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 she has sustained national or international acclaim at the very top level.

The petitioner identifies herself as "a top artist and designer" who has worked as an analyst and designer for Marconi International, Inc., since 1999.

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 which, she 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 asserts that her work has received "gold prizes in Hong Kong, China and other 4 countries" (sic). The petitioner lists eleven claimed awards in her introductory statement, dating from between 1990 and 2001. One of these does not appear to be an award at all; the petitioner identifies it as a television documentary. In a

subsequent statement, the petitioner asserts that she has won 62 awards since 1986, but again lists only eleven of them.

The petitioner received a "Gold Prize" from China's Ministry of Culture at the 1998 National Expo of Art Works Collected by Famous Companies. This award appears to be the strongest evidence submitted under this criterion, although further information (such as the number of participants and the ratio of prizes to entrants) would greatly enhance its evidentiary weight.

Other awards carry less weight as evidence. Deli Liu, vice president of the World Art Center in New York City, states that the petitioner "was a winner of Honorary Golden prize" at the 1999 Golden Swan Art Competition, in which "[m]ore than ten thousand artists . . . from nineteen countries" participated. Deli Liu asserts that the competition is a major event that receives international newspaper and television coverage, but this assertion is unsubstantiated.[1]

Some award certificates are from entities about which the petitioner has provided no background information, such as the Golden Ox Art Corporation and the World Research Center for Celebrity Culture, both based in New York. New Silk Road Models, Inc. (described as China's oldest and largest modeling agency), presented the petitioner with an "Art Achievement Award" "for she acted as art director for our successful China-US cultural activity 2000 'Close to China' sponsored by the New Silk Road Models, Inc." This award, presented in recognition of services performed for the entity presenting the award, does not appear to be national or international in scope. The petitioner claims that "[m]ore than 100,000 people much enjoyed this excellent performance," which took place in New York City. The record contains no documentation to show that a hundred thousand people attended or otherwise witnessed "Close to China."

> *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.*

The petitioner documents her membership in the China Designers Association. The record contains no documentation to establish that this association requires outstanding achievements of its members. The petitioner claims membership in other associations as well, but provides no supporting evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

> *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 states that her work has been featured in "more than 5 [art books] published in Hong Kong, China, and [the] United States," and that she and her work have been featured in "more than 20 international newspapers, Magazines and books." As noted above, the petitioner also claims to have been the subject of a television documentary, although there is no evidence to support this claim.

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[1] Attempts to learn more about this competition and the World Art Center via the World Wide Web were unsuccessful. In a search using http://www.google.com, the AAO could find only a very small number of references to the award, mostly on the web sites of individual artists who have won Golden Swan awards.

A brief biographical profile of the petitioner appears on page 268 of *The Biographies of World Celebrities*. The record contains nothing to establish the significance or circulation of this publication. It appears to be not unlike various "vanity" publications which exist primarily for the purpose of selling books to the persons named therein. It contains information about prizes, exhibitions, and so on, but there is no attributed source of this information. There are numerous "Who's Who"-type books in which the persons listed write their own profiles. This book cannot be considered primary evidence of prizes, exhibitions, or other claims.

A 1994 article from *Fashion Times* describes the petitioner's first visit to the China Fashion Expo. The author of the article states that the petitioner came to be "admired . . . quickly in China," and "could be expected . . . [to] reach the top of the mountain in the field of fashion design."

While the petitioner claims to have received substantial media coverage, the petitioner has submitted only a small amount of evidence, and the available materials do not amount to significant national or international coverage in major media.

> *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.*

The petitioner states that she was on the judging committee for the "World Art Peace" art competition in 2002, but she has submitted nothing to corroborate this claim apart from a certificate that acknowledges her "participation" but does not elaborate.

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

Various witnesses praise the petitioner's artistic abilities, but there is no indication that any particular painting or work of design has won national or international recognition as a major artistic contribution.

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

The petitioner is a co-author of *Fashion Design*, a textbook published by Zhe Jiang Photo Publishing House. It appears that the first three printings totaled 6,000 copies. The record does not establish the breadth of the book's distribution.

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

One of the petitioner's paintings appeared at the China Art Exposition. The size and nature of the exposition is not evident from the documentation submitted. The record contains second-hand references to various other exhibitions by the petitioner, but no direct evidence from the venues holding the exhibitions, nor any evidence to establish the significance of these exhibitions. An artist does not automatically attain national or international acclaim simply by putting her work on display.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner claims that her works command relatively high prices, such as one painting that sold for the equivalent of US$11,400. While the petitioner has submitted letters from some individuals and companies

that have purchased her paintings, the record contains no objective evidence to show that her work commands higher prices than comparable work by other artists.

The director denied the petition, stating that the petitioner has not provided sufficient information to show that the evidence presented demonstrates sustained national or international acclaim. On appeal, the petitioner makes several unsupported claims, such as the assertion that "50 museums and art organizations [have] collected my works," and that her textbook *Fashion Design* is used "by 6 universities and colleges in China and Hong Kong now."

The petitioner submits a certificate of appraisal, showing that the U.S. Academy of Science for World Celebrity has appraised one of her paintings at $5,200. The petitioner has not shown that this appraised price is demonstrative of sustained acclaim or extraordinary ability, and the record offers no useful information about the U.S. Academy of Science for World Celebrity, one of several United States-based organizations named in the record with names that appear calculated to sound prestigious, but about which little is known.

A new letter from Celebrities Publishing Co. indicates that the petitioner has been selected for inclusion in "a 20 series album of the outstanding painters of the overseas Chinese," scheduled to be published in December 2003, five months after the date of the July 2003 letter. This volume was unpublished even at the time of the appeal, let alone the date the petition was filed. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The record contains some credible documentation, such as that pertaining to at least one of the petitioner's prizes, but much more of the record consists of claims which, if true, ought to be easily verified by objective documentary evidence from recognized sources. Assertions by obscure organizations that the petitioner is well known cannot meet the burden of proof in this regard. The record, as a whole, does not persuasively demonstrate that the petitioner has earned sustained national or international acclaim as a painter or as a fashion designer. Given that the petitioner is employed in the United States as a fashion designer, it is notable that only a minority of the evidence of record pertains to her design work.

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 herself as a painter or designer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. 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.