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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

File: EAC 02 174 53100 Office: VERMONT SERVICE CENTER Date: SEP 29 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

[redacted]

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INSTRUCTIONS:
This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an artist-run art gallery. The beneficiary is an artist. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to employ him for three years.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel for the petitioner provides a statement.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The beneficiary is a 34-year old native and citizen of Korea. He earned a bachelor's degree in fine arts in sculpture at Kyung Pook National University, Taegu, Korea in 1996. He completed his master's of fine arts degree at Queens College of the Community University of New York (CUNY) in June 2001. From June 2001 to June 2002, the beneficiary engaged in F-1 practical training. The beneficiary has participated in a number of art exhibitions in the United States.

At issue is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in the arts within the meaning of this provision.

8 C.F.R. §214.2(o)(3)(ii) defines, in pertinent part:

> *Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

> *Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well known in the field of arts.

8 C.F.R. § 214.2(o)(3)(iv) states that in order to qualify as an alien of extraordinary ability in the arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

> (A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
>
> (B) At least three of the following forms of documentation:
>
> > (1) Evidence that the alien has performed, and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
> >
> > (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
> >
> > (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
> >
> > (4) Evidence that the alien has a record of

major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary has neither been nominated for, nor has he been the recipient of any significant national or international awards or prizes in his field of endeavor.

According to the evidence on the record, the beneficiary has received three awards, but the petitioner failed to establish the significance of the awards. It is further noted that he last received an award in 1994, more than nine years ago.

The petitioner failed to submit any evidence in relation to criterion number one.

As relates to criterion number two, the petitioner submitted numerous translated articles (published materials) about exhibitions in which the beneficiary

participated. Several articles mention that the beneficiary received an award. The petitioner failed to establish that the articles were published in *major* newspapers or trade journals. Further, the articles do not demonstrate that the beneficiary has achieved national or international recognition for his achievements.

In regard to criterion number three, the translated articles published in newspapers do not demonstrate that the beneficiary has and will perform in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation. Several articles mention that the beneficiary was one of ten Korean artists to participate in a group exhibition in Ellicott City, Maryland. Other articles mention other exhibitions. The petitioner failed to establish that the exhibitions have a distinguished reputation. Similarly, the petitioner failed to establish that the beneficiary played a lead or critical role in the group exhibitions.

The petitioner submitted no evidence in relation to criterion number four.

For criterion number five, the petitioner indicated that the beneficiary received three awards. The petitioner failed to establish that these awards are tantamount to significant recognition for his achievements. The petitioner submitted approximately eight testimonials from the beneficiary's former students, former teachers, former and current employers, and colleagues. Although the testimonials' authors speak highly of the beneficiary, they fail to establish that the beneficiary has received significant recognition for his achievements.

The petitioner submitted no documentation to establish that the beneficiary has either commanded a high salary or will command a high salary or other substantial remuneration in relation to others in the field. The beneficiary does not satisfy any of the criteria listed at 8 C.F.R. § 214.2(o)(3)(iv).

The petitioner failed to establish that the beneficiary has earned a position of prominence in his field by virtue of his achievements. The articles and reference letters are not evidence that the beneficiary has achieved national or international acclaim for his achievements in the field of fine arts.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary is a person of extraordinary ability in the arts.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.