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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: EAC 02 146 54025 Office: VERMONT SERVICE CENTER Date: JAN 04 2005

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.

Marie Johnson

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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on March 29, 2002, 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. The petitioner has submitted evidence pertaining to 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 submitted a certificate reflecting his "participation in the Tenth Annual Cultural Forum for Dominicans Abroad . . . in the 'Alumni Auditorium,' The University Hospitals of Columbia and Cornell" on August 2nd and 3rd, 2002. The record contains no evidence of national publicity surrounding this event. This evidence came into existence subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing; new circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Regardless of the date that this evidence came into existence, the petitioner has not shown that his "participation" certificate constitutes a nationally or internationally recognized top honor among professional artists. Furthermore, it is apparent that the petitioner received this certificate for his "participation" in a cultural forum rather than for winning a prize at a juried art competition.

> *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 order 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. In addition, membership in an association that evaluates its membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Documentation accompanying the petition included evidence of the petitioner's membership in the International Association of Plastic Arts and the Dominican College of Plastic Arts. The record, however, contains no evidence of these organizations' membership bylaws or admission requirements. There is no evidence to establish that the petitioner's membership in either organization required outstanding achievement or that his admission to membership was evaluated by art experts at the national or international level.

> *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.*

In general, in order for published material to meet this criterion, it 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. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend.

The petitioner's initial submission included nine newspaper articles from the 1980s. Two additional articles initially submitted cannot be accepted as supporting evidence because we are unable to discern the date of their publication or the newspaper in which they appeared. We note here that the plain wording of this criterion requires the title and date of the publications to be submitted as evidence. It is further noted that the regulations require the petitioner's acclaim to be *sustained*. The 1980's newspaper articles submitted under this

criterion fail to show that the petitioner has attracted the sustained attention of major national media in either the United States or the Dominican Republic. The absence of articles from 1990 to 2001 is a significant omission from the record.

The petitioner also submitted a seven-sentence piece about himself appearing on page 86 of the *Encyclopedia of Dominican Plastic Arts, 1844-1995*. We cannot conclude that the petitioner's limited entry into such a sizable tome (563 pages) would constitute qualifying published material about the petitioner and his work. It is noted that the size of the biographical sketches for a large number of artists featured in this publication far exceeds the petitioner's few sentences. Furthermore, this limited piece does not mention the petitioner's work subsequent to 1988.

In September 2002, the petitioner supplemented the record with an article appearing in the July 12, 2002 issue of *Hoy*, a Spanish language newspaper circulated in New York. On appeal, the petitioner submits two additional articles published in 2003, appearing in *El Dominicano* of Paterson, New Jersey and *Su Guia*. These articles came into existence subsequent to the petition's filing date. *See Matter of Katigbak* at 49. Aside from the issue of the date that this evidence came into existence, the petitioner has not shown that the preceding publications have a substantial national or international readership beyond Spanish language readership in the New York or New Jersey regions.

The record contains no evidence showing that articles about the petitioner have appeared in publications with significant national distribution. For example, the record lacks data (from sources such as media guides) indicating the national or international circulation of the newspaper editions in which the petitioner was mentioned. Nor is there evidence indicating the number of copies of *Encyclopedia of Dominican Plastic Arts, 1844-1995* in circulation. Furthermore, the content and general tone of the petitioner's published pieces is not adequate to show that he is among the most highly acclaimed painters at the national or international level. Finally, and most notably, there is no evidence showing that the petitioner received sustained national media coverage from 1990 to the petition's filing date.

> *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 submitted a certificate reflecting his "participation in the Tenth Annual Cultural Forum for Dominicans Abroad . . . in the 'Alumni Auditorium,' The University Hospitals of Columbia and Cornell" on August 2nd and 3rd, 2002. As previously noted, this event occurred subsequent to the petition's filing date. *See Matter of Katigbak* at 49. The record contains no further information about this event. There is no indication that the petitioner's participation in this forum involved judging the work of other artists. Nor has the petitioner presented evidence showing, for example, that he has served as a juror for national or international level art exhibitions involving professional painters.

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

The petitioner submitted several letters of support from individuals who have encountered him at local galleries or community art exhibitions in New York or New Jersey. These letters describe the petitioner as a

talented artist, but they provide no information regarding how the petitioner's artistic contributions have influenced the artistic field. The issue here is not the originality of the petitioner's artistic works, but, rather, whether his artwork constitutes a contribution of major significance to the artistic field. Original submissions for display or exhibition are expected of artists and do not set the petitioner apart from others in his field. The record does not indicate the extent of the petitioner's influence on other artists, nor does it show that any specific works by the petitioner are particularly renowned as works of contemporary art. The petitioner has not shown that his works have garnered widespread attention, command unusually high prices, or are in high demand among museum curators or gallery owners throughout the United States or any other country. Thus, there is no indication that the petitioner has made a contribution of major significance to his field.

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

The record contains evidence showing that the petitioner has displayed his work at places such as the Dominican Culture Center in New York (July 2002), The Rio Penthouse Gallery in New York (January 2003), and the Museum of Patterson in New Jersey (August 2003). All three of these exhibitions occurred subsequent to the petition's filing date. *See Matter of Katigbak* at 49. Furthermore, we do not find that participation in community art exhibitions limited to New York and New Jersey is indicative of national or international acclaim.

We note that the exhibitions and art shows in which the petitioner participated often occurred in areas where the petitioner was residing at the time of the exhibitions. The record contains no evidence of the national or international significance of these venues or of the exhibitions. It must be stressed that an artist does not satisfy this criterion simply by arranging for his work to be displayed; otherwise most, if not all, visual artists would satisfy this criterion, rendering it meaningless. Materials in the record indicate that several of the "exhibitions" showing the petitioner's work were intended to facilitate the sale of his artwork. Display of the alien's work for purposes of sale carries significantly less weight than does museum display, strictly for the purposes of public viewing. Further, the record indicates that the petitioner often displayed his works among those of other artists and it has not been shown that these other artists enjoyed national or international reputations. Nor has the petitioner demonstrated his regular participation in shows or exhibitions at major venues devoted to the display of his work alone. In sum, the petitioner has not shown that his exhibitions enjoy a national reputation or that participation in his exhibitions was a privilege extended to only top artists.

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every artist whose works have been displayed at a local community exhibition, or whose name has appeared in a newspaper article, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his field will be unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise for his work, without reaching the very top of the field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit

prospectively the United States. In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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.