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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] **Public Copy**

File: EAC 99 041 50364 Office: Vermont Service Center Date: APR 27 2001

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)

IN BEHALF OF PETITIONER: Self-represented

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 Service 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 she 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 dramatist and producer. 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 claims to have won several such awards but does not identify them in the statement which accompanied the initial filing. The petitioner has submitted several certificates pertaining to various festivals and events, but these are not prizes for excellence. Rather, they simply acknowledge the petitioner's participation in those events.

One certificate is headed "Diploma of the Winner" with the legend "for artistic achievements in the All-Union Festival of mass dramatized shows and theatrical performances devoted to the 60th Anniversary of the foundation of the USSR." The "Diploma" itself is a pre-printed "form" document with the petitioner's name and title handwritten into blank spaces. The record does not indicate how many "winners" were named at this festival, but the existence of pre-printed "form" documents suggests multiple winners.

The Main Committee of the Achievements of National Economy of the USSR presented the petitioner with a silver medal "for successes achieved in the development of national economy of the USSR." Like the above document, the certificate regarding the silver medal is a pre-printed "form" document with the petitioner's name and other information added by hand. The silver medal and "Diploma of the Winner" were both awarded to the petitioner in 1977.

Documents in the record refer to other dramatists, directors and producers as "Lenin Komsomol Prize Winners," but there is no indication that the petitioner has won the Lenin Komsomol Prize or any other prize of comparable prestige.

The only "award" certificates in the record which date from after the petitioner's 1994 entry into the U.S. consist of an "honor certificate" from the International Pushkin Society of Bronx House, acknowledging that the petitioner was "a Participant of the 7th Poetry Competition of 1997," and a "Certificate of Appreciation" for the petitioner's "Outstanding Active Participation" in Joyce Kilmer Annual Career Day. The latter event appears to have taken place at a local school; the attesting official is identified as a principal.

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 several organizations, but she does not establish that any of these organizations requires outstanding achievements of its members. Several of these entities include the word "Moscow" in their names, suggesting that they are local rather than national organizations.

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.

[redacted] director of the Moscow Theater of Plastic Drama, states that the petitioner attracted media coverage while serving as the assistant director of the theater's literary department:

> helped her attract the attention of representatives of the Central press, television, and theater critics. [The petitioner] holds press-conferences with journalists, makes speeches on television shows, works with authors of articles. During her successful activity as an assistant director of the literary department, there were more than 70 articles published in the press not only in Moscow and Russia, but also in Italy, India, and Tunisia where the Moscow Theater of Plastic Drama was on tour in 1988-1989. Articles published in India and Tunisia were created on the basis of author's materials worked out by [the petitioner].

The regulation requires the submission of published materials about the alien, rather than third-party letters which attest to the existence of such published materials; the above letter, which does not identify the publications which carried the unnamed articles, cannot carry the same weight as the published materials themselves.

The petitioner submits copies of several newspaper articles discussing various productions of the Moscow Theater of Plastic Drama. These articles never mention the petitioner's name and therefore the articles are not about the petitioner; her affiliation with the theater group does not make her the subject of the articles.

The petitioner submits photographs which, she states, were taken during the taping of various television segments. The record does not show whether these segments aired on major national television programs or lesser local stations. More acclaim and prestige adheres to a prime-time series on a major national broadcast network, for instance, than to a five-minute segment on a local community access cable program.

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 was a member of the All-Union Art Jury of the 12th World Festival of Youth and Students. It is not clear how much weight resides in judging the work of "youth and students," as opposed to established adult artists who have made the performing arts their field of endeavor.

Documentation in the record shows that the petitioner, as commercial director of "Renaissance," was "appointed an individual judge for the selection of creative projects suitable for participation in International ARTIADA-2000, specialization: 'Festivals and Carnivals,' for the period from July 1991 to December 2000." The record also shows, however, that the petitioner herself was involved in the founding of Renaissance in late 1990. The petitioner's selection as a judge by an entity which she herself had only recently founded may reflect the degree of control which the petitioner exercised over the firm, but it does not indicate sustained acclaim in the same way as, for instance, selection to sit on a nominating committee for a major national award.

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

The petitioner has submitted letters from various witnesses, mostly members of the Moscow theatrical community. We discuss representative examples here. [redacted] the vice chairman of the Committee on Culture at Moscow City Hall, lists various theatrical productions which the petitioner has presented in Moscow's parks, such as The Most Incredible Adventures, which Mr. [redacted] describes as an "exciting and inventive musical show for children with beautiful decorations, wonderful giant dolls, and splendid music written by the composer Gennady Gladkov especially for the performance." Mr. [redacted] states that the petitioner "manifested herself as a real professional" whose efforts "left a bright trace in the development of mass dramatized shows and theatrical performances in central parks of Moscow and became a real textbook for the young generation of beginning directors and dramatists."

Professor [redacted] head of the Council of the All-Russia Theatrical Society, states that the petitioner "successfully organized" festivals as well as "[i]nternational conferences in Bulgaria and Sochi." Several other witnesses from Russia's Ministry of Culture and other bodies attest that the petitioner is a skilled director, producer, and script writer.

Professor [redacted] former head of the Department of Stage Art in the school-studio of the Moscow Artistic Academic Theater of the USSR, states that the petitioner wrote the scenario for the children's festival Salute, Peace, Salute, Festival! which "was attended by Mikhail Gorbachev, and representatives of many nations." Regarding the petitioner's work in the United States, Prof. [redacted]

states that the petitioner "participates in a lot of carnivals and street festivals. She has created art show for children, as well as writes articles. She is preparing material for her book 'American Festivals.'" Prof. [redacted] states that the petitioner's "contribution into organizing multinational festivals and parades in New York may be very useful."

[redacted], vice president of "Connect International," a "Soviet-American-Swiss Joint Venture," describes the petitioner's duties as a commercial director for that joint venture:

> Big practical experience and professionalism helped [the petitioner] become a wonderful organizer and coordinator of an artistic group. She participated in the project of restoration of Perm Academic Opera and Ballet House; she was involved in working out of company style project of a series of big enterprises of the capital; exhibitions of unique items of artists-jewelers in Leningrad and Chicago were organized. . . . [The petitioner] delivers lectures on problems of searching for new solutions in advertising, participates in international conferences, studies folklore and people's crafts during her long foreign trips.

Other documentation indicates that "Connect International" produced programming for local broadcast on Russian-language television and radio stations in Chicago.

The petitioner has detailed, at length, various projects in which she has participated, but the record does not show how the petitioner's efforts are more significant than the work of almost all other theatrical producer/directors in Russia. The individuals who have discussed her work are her former collaborators, supervisors and employers; the letters do not establish that the petitioner had earned a national reputation extending beyond the entities for which she worked. Regarding her work in the United States, the record does not indicate that the petitioner's work has garnered any significant recognition outside of a few Russian-speaking enclaves in New York and Chicago.

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

The record contains no scholarly articles by the petitioner. For You, a Russian-language magazine published in New York, published a poem and an article by the petitioner, but neither of these pieces directly concerns her work in the field, and there is no indication that For You is a major national publication rather than a local publication which, because it is published in Russian, excludes most of the local population from its potential readership.

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

The petitioner asserts that she satisfies this criterion through her positions in Connect International and its offshoots Renaissance and Artiada. Certainly the petitioner played leading roles with these entities, but the record does not establish that these entities are particularly distinguished at the national or international level. Active involvement in the performing arts is not synonymous with distinction.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Prof. [redacted] identified above, asserts that the petitioner's production A Most Incredible Adventure "was of great commercial success" and "was seen by more than three million children." Prof. [redacted] cites no source for this information, nor does the record contain corroborating documentation.

The petitioner has been involved with several stage presentations, in Moscow, New York, and touring in various countries. The record, however, contains no primary evidence to establish that these stage productions have generally been among the most successful stage shows in the countries where they took place.

The director denied the petition, stating that while the petitioner has been very active in the performing arts, the record does not indicate the importance of the petitioner's projects relative to the rest of the field. To qualify for this highly restrictive visa classification, it cannot suffice for the petitioner simply to be an experienced and respected producer/director/writer.

On appeal, the petitioner maintains that she has submitted sufficient evidence. The petitioner asserts that the silver medal which she received in 1977 "is a very high honor. From 1957 to 1970 474 Silver Medals were issued (usually about 40 medals a year)." The petitioner did not receive her medal between 1957 and 1970, so this figure is of diminished use. The petitioner states that this information derives from the Great Soviet Encyclopedia, but she submits nothing from the Encyclopedia itself to corroborate this claim or place it into context. The small number of medals presented annually does not necessarily correlate with the importance of the award.

The remainder of the petitioner's appeal statement consists of a list of her various achievements, already discussed above. The petitioner's personal assessment of the importance of these accomplishments does not represent objective evidence that the petitioner is among the best-known dramatists in Russia or the United States.

The petitioner submits an evaluation of her educational credentials. National and international acclaim, however, do not inherently arise from one's educational background; one does not automatically come to national or international prominence by virtue of graduating from a prestigious university.

The petitioner submits the Artistic Code of the World Artistic Movement, in which she has been deeply involved. While the movement has set lofty goals for itself, such as achieving international peace and cooperation through the arts, there is a considerable difference between setting such goals and making measurable progress toward them.

The petitioner has been in the U.S. since 1994, four years before she filed her petition in late 1998. The evidence of record indicates that the petitioner's reputation in the United States is largely limited to the Russian communities in two cities. The petitioner has not shown that her employment at [redacted], an entertainment center located in Brooklyn, has resulted or is likely to result in national recognition or 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, 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.

Review of the record, however, does not establish that the petitioner has distinguished herself as a dramatist/producer 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 indicates that the petitioner shows talent in her field, and has had some success, but is not persuasive that the petitioner's achievements set her significantly above almost all others in that 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.