



BA

U.S. Department of Justice
Immigration and Naturalization Service

Id. *ying data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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

[Redacted]

File: EAC 01 225 53446

Office: Vermont Service Center

Date: AUG 11 2002

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:

[Redacted]

Public Copy

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 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 that 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, 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 he has sustained national or international acclaim at the very top level.

Counsel describes the petitioner's work as an equestrian circus performer, stating that the petitioner "is credited with single-handedly creating and developing famous program items, stunts and tricks which still cannot be repeated by any other rider. He performed with the 'Honored Artist of the Republic of Kazakhstan,' KadyrKhan Bulibekov and his famous Bulibekov Riders. . . . His image on or under the horse became the symbol of horsemanship and a trademark for the Bulibekov Riders." In the United States, the petitioner seeks to work with the Kambar Team, another troupe of riders.

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, 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.

Witnesses assert that the petitioner has won various prizes, such as a prize in the 1977 All-Union Circus Art Competition, as well as an award from the State Circus of Irkutsk in 1980. The petitioner submits a copy of a certificate, entitled "Note of Honor," from the Irkutsk State Circus. There is no evidence that the "Note of Honor" is a significant prize rather than a congratulatory acknowledgement of the petitioner's performance. There is also no evidence that this honor is national or international in nature, rather than a purely local honor bestowed by municipal authorities in Irkutsk. The record contains no direct evidence from the organizers of the 1977 All-Union Circus Art Competition to show that the petitioner won a prize there, or to establish the significance of that prize. References by the petitioner's colleagues and employers to such a prize do not constitute documentation of the petitioner's receipt of the prize. 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.

Counsel states that the petitioner's "act impressed the media worldwide. . . . [The petitioner's] photograph has been featured in international newspapers and various circus programs."

The petitioner submits a copy of an article from *The New York Times*. This article focuses on a variety of Mongolian circus acts, and describes Kadyrkhan Bulibekov as "master of trick riders." The petitioner's name does not appear in the article, although the article refers to other unnamed Kazakh riders. The article indicates that the riders are not the focal act of the circus: "If the Mongols are jealous of their Kazakh cousins, they show no sign. They are the stars of the circus."

Other articles similarly discuss the entire riding troupe as a group, but they do not identify the petitioner by name. Some of the articles feature photographs of an unidentified rider, and the petitioner asserts that he is that rider. These articles do not single him out as an individual; the photographs serve to illustrate an example of the group rather than call specific attention to him. A reader who did not know the petitioner's name would, after reading the articles, still not know the

petitioner's name. These articles appear to be, for the most part, local newspaper reviews of performances, rather than national media coverage of the troupe's work. Another article describes a change in the method by which the director of the Moscow State Circus selects its director. This article features a photograph of two unnamed riders, one of whom is said to be the petitioner. This photograph is apparently offered as a generic illustration of Moscow Circus performers.

One article that does mention the petitioner by name appeared in *Novoe Russkoe Slovo*. The article discusses a rehearsal witnessed by the reporter, and the petitioner is the only performer mentioned by name (except for a short digression discussing performers of the past). The record contains no information to establish that *Novoe Russkoe Slovo* constitutes a national or international publication or otherwise qualifies as "major media." An advertisement on the back of the clipping contains U.S.-format telephone numbers and a reference to a New York-based business, suggesting that the newspaper is a U.S.-based Russian-language publication, targeted at a local specialty market rather than a national readership.

The petitioner's photograph appears on the cover of a 1995 issue of *Horse and Horseman* magazine. The cover article is about the petitioner's equestrian team. Two sentences of the body of the text, and one caption, are devoted to the petitioner. The petitioner is not the focus of the article, and the petitioner has not established that *Horse and Horseman* is a major publication.

In response to a request for additional evidence, the petitioner has submitted copies of articles from newspapers whose titles translate as *Theater, Art and Literature*¹ and *Echo of the Planet*. The two articles feature what appear to be identical photographs of the petitioner. The latter is dated November 12, 2001. The former article is undated, but it makes a specific reference to the article from *Echo of the Planet*. Counsel indicates on appeal that this article appeared in December 2001, and was therefore published immediately prior to its submission by the petitioner. The director received that submission on December 26, 2001. The director's request for additional published materials was dated September 28, 2001. We cannot rule out that the articles were published in order to address the director's request. If these articles did not exist as of the petition's April 30, 2001 filing date, then they cannot retroactively establish that the petitioner was eligible as of that date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The petitioner has not established that either of these publications constitute major national or international media. *Echo of the Planet* features a New York telephone number on its masthead.

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

The petitioner submits letters to discuss his contributions. Rashid Kambarov, president of Kambar Team LLC., states:

¹ This article is in Russian, but the translator of the article asserts that she is "fully competent in Hebrew and English" and that the translation "is a true and faithful translation of the original document submitted to me in Hebrew."

[The petitioner] is an internationally renowned circus performer with extraordinary skills in the equestrian field, particularly in horsemanship stunts and acrobatics. . . .

The President of Kambar, the undersigned Rashid Kambarov, and the [petitioner] . . . used to perform with the Ringling Bros. & Barnum [and] Bailey Circus during 1992-1996. The said team led a magnificent horse act, consisting of ten riders and numerous horses. John Caraway, the writer, described the act as the most entertaining of its kind in the world. . . .

The [petitioner] is indeed an individual of proven extraordinary ability, experience and talent. [The petitioner] commenced his magnificent career in the former Soviet Circus in 1970. . . . [The petitioner] single-handedly created and was first to perform numerous tricks and maneuvers using two and more full galloping horses. These acts are only performed by [the petitioner] and have never been duplicated.

Kadyrkhan A. Bulibekov states that the petitioner “is a unique gifted performer” who “has technically designed and performed his famous program item – getting through bellies of two riding horses. This number has never been performed before, and still cannot be performed by another horse rider.”

Shalpan A. Kojamberdieva states:

I have been in the team of the Kazakh Circus along with [the petitioner] since the foundation of the Circus. . . .

Very artistic on the arena, works hard to improve his skills, hard-working, has a good command of horses. As a result, he is the only performer who passes underneath two horses. For this program he was distinguished by a Note of Honor by the committee of State Circus, and was highly praised for his skills.

V.R. Chalabaev, director of the Department of Creative Art at the Great National Kazakh Circus, cites the petitioner’s “feat [of] passing underneath two galloping horses” and states that the petitioner’s “name . . . has been entered in golden letters in the history of Kazakh Circus.”

While the above witnesses are plainly impressed with the petitioner’s achievements, there is no indication in the record that other equestrian circus performers or aficionados regard the petitioner’s stunts as being especially significant contributions to the field. The petitioner’s innovations are not automatically of major importance merely because of their originality or difficulty.

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

Counsel asserts that the petitioner satisfies this criterion by virtue of having “performed with the legendary Ringling Bros. and Barnum & Bailey Circus,” where he “not just participated but led the equestrian program.” The Ringling Brothers and Barnum and Bailey Circus is unquestionably an establishment with a distinguished reputation, as it is one of the most famous circuses in the world. The newspaper articles about these performances repeatedly and consistently identify Kadyrkhan Bulibekov as the group’s leader. Counsel names other troupes with which the petitioner has performed, but counsel does not explain how the petitioner’s role was a leading or critical one. Simply appearing with a well-known circus does not constitute a leading or critical role.

The director denied the petition, stating that the record establishes “some localized notoriety” but not the sustained national or international acclaim necessary to qualify for the highly restrictive classification that the petitioner seeks. On appeal, counsel maintains that the petitioner has met his burden of proof by submitting published materials and evidence of his leading or critical role, as well as contributions of major significance. We have already addressed the evidence pertaining to these criteria, and counsel adds nothing new in this regard. Counsel appears to have abandoned the earlier claim that the petitioner had won qualifying prizes, because counsel does not indicate on appeal that the petitioner has satisfied that criterion.

The only new evidence submitted on appeal is a letter from Rashid Kambarov, who states that he himself has received immigrant classification as an alien of extraordinary ability, and that he is therefore in a position to comment on the petitioner’s abilities. Mr. Kambarov repeats previous claims already discussed above. This letter does not provide direct evidence that the petitioner’s recognition extends beyond his employers and teammates. Mr. Kambarov’s immigrant status as an alien of extraordinary ability does not give his assertions greater evidentiary value.

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 an equestrian circus performer 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 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.