



BA

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent unwarranted invasion of personal privacy

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



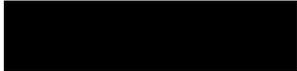
File: WAC 99 255 54020

Office: California Service Center

Date:

DEC 10 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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, California Service Center, and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion has been granted. The Administrative Appeals Office (“AAO”), on behalf of the Associate Commissioner, has notified the petitioner of derogatory information and allowed the petitioner an opportunity to respond. The AAO affirms its previous decision and hereby denies the petition.

We note that the petitioner was previously represented by attorney M. Edwin Prud’homme. That attorney, however, withdrew his representation immediately upon notification of the derogatory information to be discussed below. The phrase “prior counsel” shall herein refer to Mr. Prud’homme.

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, and the AAO had concurred with this determination. On motion, prior counsel protests the AAO’s lack of effort “to verify basic public source information furnished by the Petitioner.”

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 achieved sustained national or international acclaim are set forth in Service regulations at 8 C.F.R. 204.5(h)(3):

Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

The petitioner had initially claimed to have satisfied nine of the ten criteria set forth at 8 C.F.R. 204.5(h)(3). The Service has never disputed the petitioner's activity as a judge of the work of others, satisfying 8 C.F.R. 204.5(h)(3)(iv), but the Service has not granted any of the other eight claimed criteria. On motion, the petitioner does not challenge the Service's findings regarding three of those criteria (original contributions of major significance, display of work and leading or critical role), leaving five criteria in dispute.

On motion, prior counsel states that the petitioner "is one of the greatest circus wire walker acrobats of all time, one of the best creators of new methods of circus performance presentation and one of the great coaches in the field of circus acrobatics." Prior counsel contends "[t]he Petitioner is one of the greatest acrobats/teachers in modern times and she will be recognized long after she dies as such. She is in the same class as Arnold Palmer and Sammy Snead are to golf . . . or ██████████s is to baseball." Prior counsel's contention that the petitioner ranks alongside these legendary figures carries no weight as evidence. We acknowledge that some athletic endeavors are more conducive to general fame than others, but even if we restrict consideration to high-wire acrobats, the petitioner has not shown that she has achieved the same recognition as, for instance, the Flying Wallendas.

Much of the materials submitted on motion consists of copies of documents submitted on appeal, which the AAO already considered in the context of its initial appellate decision. The present decision will focus on newly submitted materials.

The petitioner submits new, certified translations of the petitioner's documents, and asserts that, despite grammatical errors, the original translations did not contain material errors or inaccuracies. The new translations were prepared by ██████████ who identifies herself not as a professional interpreter but as an acrobat "with a talent to learn languages." ██████████ states "I read and write decernfully [sic] both in Chinese and English."

Prior counsel, on motion, does not address the AAO's finding that the petitioner appears to have stopped performing in 1987. The petitioner must show that the petitioner's activities since 1987 have generated sufficient recognition to justify a finding that the petitioner's acclaim has been sustained. Evidence from prior to 1987 is certainly acceptable but only in the context of a pattern of sustained acclaim that continues past the date of filing to the present.

Photographs and promotional materials depict the petitioner's involvement with a cultural show in Portland, Oregon in early 2002. Apart from the fact that this event took place after the petition's filing date, there is no indication that the festival was anything other than local in nature.

Regarding the specific criteria at 8 C.F.R. 204.5(h)(3), the petitioner has submitted the following documentation and arguments from prior counsel:

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The AAO had previously noted the absence of certified translations for numerous awards claimed by the petitioner. On motion, the petitioner submits new translations from her protégée Wei Wei Lang. 1998 certificates attributed to the People's Republic of China Chinese Culture Department state:

Acrobatic "Pagoda of Bowls" Coached and Directed by [REDACTED] and [the petitioner] has won the Second International Acrobatic Golden Award in Puta Biss.

Acrobatic "Diabolo Skill" Coached and Directed by [REDACTED] Mr. [REDACTED] and [the petitioner] has won the 1998 Mologo Children International Acrobatic Golden Award.

The petitioner still has not persuasively established the significance of these awards. Witness letters discussing the awards are not credible in this proceeding, owing to the petitioner's documented submission of a falsified witness letter to be discussed in greater detail below. A number of other prize certificates are from the Beijing Culture Department, suggesting that the awards are local rather than national or international.

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.

Anthony Lu, publisher of *Southern Nevada Chinese Weekly*, states that *China Commercial News*, which interviewed the petitioner in 1993, "is a newspaper published in Hong Kong, somehow in a way more concentrated into business/economics information." This letter does not establish that the publication constitutes major national or international media.

The petitioner submits translated articles that appeared in the *Portland Chinese Times* in the first months of 2002. These articles, published after the filing date, refer to Chinese cultural events in the Portland area, and indicate that the petitioner "has been offered a position as Director of Acrobatic Instructor at Portland Chinese Art Center." Materials in the record indicate that the *Portland Chinese Times* owns the Portland Chinese Art Center; a letter referring to the aforementioned job offer is on *Times* letterhead and refers to "our Art & Cultural Center." Thus, this newly submitted published material was produced by an entity that seeks to employ the petitioner.

The petitioner submits a recordable CD-ROM which, prior counsel states, "features great Chinese acrobats. [The petitioner] is included on this CD." Repeated attempts to read the data

on this disc have failed, and the computer “crashed” during one of several attempts to open a data file. Because the disc itself is a recorded copy, rather than a commercially produced original, there is no printing on the disc surface to indicate that it is, for instance, an encyclopedia of Chinese acrobats. Furthermore, as a copy, it may well have been altered from any original from which it was copied. As this decision will show, it is not unfounded speculation to consider the possibility of alteration of evidence in this proceeding.

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

The AAO had found that the petitioner had not satisfied this criterion. On motion, prior counsel refers to an “[a]ffidavit submitted by a local Chinese business executive” to state that the petitioner receives “high remuneration for services.” Prior counsel does not identify the executive by name, and we can find nothing among the newly submitted exhibits that matches prior counsel’s vague description.

Aleksandr Ivanov indicates that the petitioner received “one of the highest salaries ever given to an artist in China.” ██████████ does not explain how he has sufficient knowledge of Chinese artists’ salaries to make such an assessment; he merely asserts “[t]his is common knowledge in our trade.” Other witnesses offer similar assertions to the effect that it is well known that the petitioner is highly paid, but these assertions are not documentation of the petitioner’s salary, even if other submissions by the petitioner had not irreparably undermined the credibility of letters in the record.

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

The AAO had stated:

On appeal, prior counsel argues that the petitioner meets this criterion because she has a current job offer. The fact that the petitioner is employable is not evidence of commercial success. The record contains no box office receipts reflecting the commercial success of performances directed by her. Thus, the petitioner has not established that she meets this criterion.

On motion, prior counsel states “The Examiner has questioned [the petitioner’s] job offer in the U.S. This Examiner questions her commercial success.” The AAO, in its initial appellate decision, did not “question” (i.e. doubt the existence or validity of) the job offer. Rather, the AAO determined that a job offer for future employment is not evidence of past commercial success as shown by box office receipts. Prior counsel, on motion, fails to explain how a job offer does, in fact, constitute evidence of commercial success as shown by box office receipts. Additional information about the prospective employer has no discernible bearing on the petitioner’s past commercial success, and prior counsel does not claim that the material submitted on motion includes documentation of box office receipts, as required by the plain

wording of the above regulation. Thus, prior counsel has offered no substantive rebuttal of the AAO's finding in this regard.

We note the petitioner's submission of several new affidavits. Aleksandr Ivanov, artistic director of Inversion Entertainment Group, Las Vegas, states:

From reading the report of your examiner it would appear that he/she has very little knowledge about the performing arts world. There is a wealth of general knowledge about performing artists. Even my children can go on line with our family computer to the U.S. Library of Congress and find reams and reams of data on acrobatics and circus performances.¹ . . .

For me it was an unforgettable moment when I meet [sic] the legendary [the petitioner], face to face. She is one of the great names of circus history. I have known about her legendary performances for more than 20 plus years. I first learned how she set new limits to wire walking by developing and performing [her] "walkover on the wire" when I was studying circus history at Moscow Circus Institute . . . nobody can repeat it yet.

██████████ states that she "was an acrobat for over 15 years," beginning at the age of seven, and that she "was a student of [the petitioner], China's world famous acrobat and teacher." ██████████ states that, under the petitioner's tutelage, she won medals at competitions in France and Italy in the late 1980s. ██████████ states that the petitioner "was and still is one of the greatest living persons in the field of international acrobatics." A translated certificate, dated December 20, 1995, states that ██████████ "has received the highest Honor of Certificate of excellent [sic] in China in the field of Circus Arts. Signed and Sealed by President of all famous people and Chinese minister of Culture." A photocopied article from the *Chicago Tribune* includes a photograph of an unidentified "Peking Circus member" whom the petitioner identifies as Jun Li Sun.

Wei Wei Lang states "I was recently awarded a Gold Medal as one of the world champion acrobats," but she does not specify the awarding entity or the name of the competition. ██████████ I ██████████ claims to have won additional medals during the early 1990s, between the ages of ten and thirteen. About the petitioner, ██████████ states:

¹ With respect to this assertion, we searched the Library of Congress' website for mention of the petitioner. No results were found. A further search for the petitioner's name on the major search engine, www.google.com, produced two hits, neither of which pertain to this petitioner (one refers to a character in a play, the other refers to a staff member at a university in Canada). Searches for the names of Arnold Palmer and Ted Williams, to whom prior counsel compares the petitioner, each yielded over one hundred thousand hits. The petitioner does not submit even a single example from the "reams and reams" of information discussed (but not described in any detail) by Mr. Ivanov. An Internet search also failed to reveal any mention of the acrobatic maneuver that, according to Mr. Ivanov, is named after the petitioner and known around the world. While the Internet is not an infallible source of information, in this instance it is certainly relevant that a search of the Library of Congress' web site simply does not convey the information that the petitioner's witness claims it does. Mr. Ivanov's statement is therefore yet another dubious claim in a petition already known to contain false information.

[The petitioner] is, was and will be one of the greatest acrobats and acrobatic teachers in the world. I was taught . . . again and again to seek to reach the level of [the petitioner], one of the very best in the world of entertainment gymnastics/acrobatics.

[The petitioner] is known not only in China but worldwide in the fellowship of professional acrobatics. She was able to combine acrobatics and the art of magic into performances seen and talked about around the world.

██████████ labels the AAO's earlier decision "very anti-Chinese, anti-performing artist" but does not specify any passages from the decision that demonstrate a bias against the Chinese or against performing artists. Vague and unproven allegations of bias and unfairness carry no weight and contribute nothing to the claim that the petitioner qualifies for the immigrant classification she seeks.

Prior counsel states that the above affidavits establish that the petitioner "is one of the greatest acrobats and acrobatic teachers of the modern world." The personal opinions of the petitioner's former students and acquaintances are not evidence of widespread acclaim. ██████████ refers repeatedly to "the history" and "common knowledge" of the petitioner's reputation, but he does not identify even one primary source through which these vague and general claims could be verified.

The new affidavits contain vague and unsupported claims. Given the petitioner's proven submission of at least one forged or fraudulent letter, unsupported affidavits carry negligible weight in this proceeding. If the petitioner is unable to provide credible, objective documentation of sustained acclaim, she cannot overcome this deficiency by selecting witnesses who declare that she enjoys such acclaim.

The petitioner's credibility is negated by evidence pertaining to the remaining criterion that the petitioner claims to have satisfied:

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.

On motion, prior counsel states "[t]he Examiner has questioned the International Brotherhood of Magicians and [the petitioner's] membership in this organization. A document is furnished from the Executive Director of this Association that states to [the petitioner's] superior abilities in this field." The AAO did not initially question the petitioner's membership in the International Brotherhood of Magicians ("IBM"). Rather, the AAO observed that the association's own documents state that membership is "open to anyone 12 years or older who have a sincere interest in the art of magic." Interest in magic, and attaining the age of twelve

years, are not outstanding achievements, and therefore membership in this association cannot under any circumstances satisfy the regulation at 8 C.F.R. 204.5(h)(3)(ii). The petitioner has not overcome this finding.

The record contains no “document from the Executive Director” of the IBM. Prior counsel appears to have referred to a letter attributed to the executive *secretary*, Darleen Eads, attesting to the petitioner’s membership. This letter, even on its face, does not contradict our finding regarding membership requirements. This copy of a previously-considered letter does not constitute new evidence.

Further examination of the letter attributed to [REDACTED] has raised very serious doubts as to its authenticity. The letter, dated November 8, 2001, reads:

We are very happy to know that [the beneficiary] is apply for the Amercian Permanent resident, and we support her.

[The beneficiary] is not only the best acrobatic artist in China; She also is the best magician in China, and she is a member of the IBM (International Brotherhood of Magicians.)

If her apply for the American permanent resident have accept we believe that she will contribute to the American Magic society.

The petitioner has submitted copies of two different IBM membership certificates. The earlier of the two certificates states the petitioner’s membership number as 89982R. Subsequently, on motion, the petitioner has submitted a second IBM membership certificate. This second certificate lists a different membership number, 62889R, and it states that the petitioner was elected into membership in February 2002. The petitioner has thus claimed two different IBM membership numbers. The second certificate, indicating that the petitioner joined in February 2002, is not consistent with the November 2001 letter that had indicated she was already a member.

Because of the inconsistent dates, and discrepancies in the letter (such as the use of two different fonts and the very poor grammar in the body of the letter), the AAO contacted Darleen Eads, executive secretary of the IBM, who purportedly signed the above letter. When contacted with regard to the letter, [REDACTED] initially informed the AAO:

I have checked through the paperwork that is filed in our storeroom from last year [i.e. 2001], and there is no record of a letter written to [REDACTED] I have also checked within my computer for a document that may be stored there, and it does not exist. . . . I have no recollection of any such letter. . . . [REDACTED] as only been a member of the International Brotherhood of Magicians since February of this year. I am not sure how she would have gotten a letter with my signature on it before she was even a member of our organization.

██████████ requested a copy of the letter that she had purportedly issued on the petitioner's behalf. Subsequently, after receiving the copy, ██████████ stated "[n]ow that I have seen the letter, I can definitely say that I did not write this letter." She added that the certificate submitted with the November 8, 2001 letter "is not authentic," and that the claimed membership number ██████████ is not valid. ██████████ verified that the petitioner's second member certificate, with number 62889R and an issuance date of February 2002, "is . . . an authentic certificate that was presented to [the petitioner] by mail in April 2002." The petitioner's submission of the February 2002 certificate corroborates ██████████ assertion that the petitioner was not yet a member in November 2001. Clearly, the petitioner claimed membership in the IBM several months before she actually become a member of that organization.

From examination of the evidence, as well as ██████████ comments to the AAO, we conclude that an authentic IBM membership certificate and an authentic letter from ██████████ were altered and photocopied for submission to the Service. The altered documents contain a false membership number and the false claim that the petitioner was an IBM member in November 2001.

Section 204(b) of the Act indicates that a petition may be approved if "the facts stated in the petition are true." Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

While binding determinations of admissibility are outside the scope of this decision, we take note of section 212(a)(6)(C)(i) of the Act. That section states "[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible." This provision appears to apply here, and would remain in effect for any future petition on the alien's behalf, whether or not the future petition contains false documentation.

The petitioner's submission of altered, forged or fraudulent documentation (in this case the letter falsely attributed to ██████████, and the accompanying altered IBM membership certificate with a nonexistent membership number) casts doubt on the remaining evidence offered in support of the petition. In short, the petitioner has gravely compromised her overall credibility.

Part 8 of the I-140 petition form states, in pertinent part, "I certify under penalty of perjury under the laws of the United States of America that this petition, and the evidence submitted with it, is all true and correct." The petitioner signed her name under this declaration, thus assuming legal responsibility for the truth and accuracy of any and all information submitted in support of her petition. The petitioner has violated this provision by submitting falsified evidence, and the Service is under absolutely no obligation to presume that the IBM materials are the only false documents in the record. Similarly, having proven that the petitioner has submitted false

documents in support of a material assertion, the Service is not obligated to verify, document by document, the entire record of proceeding. The burden of proof lies entirely with the petitioner.

Pursuant to 8 C.F.R. 103.2(b)(16)(i), the AAO notified the petitioner, through prior counsel, of its findings regarding the falsified letter attributed to Darleen Eads, as well as the falsified IBM membership certificate. In a letter dated September 17, 2002, the AAO informed the petitioner of the AAO's intent to deny the petition, and allowed the petitioner 30 days to respond to this information. At the time of this writing, nearly 60 days have elapsed with no response from the petitioner. Prior counsel's only submitted response was to withdraw from the proceeding.

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 an acrobat 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. By submitting fraudulent documentation in support of her claim, the petitioner has irreparably impaired her credibility and raised the additional question of why an acrobat who truly enjoys national or international acclaim would need to rely on falsified documentation to show such acclaim. 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of June 17, 2002 is affirmed. The petition is denied.