



B2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying 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



JAN 09 2002

File: WAC 98 178 52139 Office: California Service Center Date:

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:



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 will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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 that she qualifies for classification as an alien of extraordinary ability. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision and dismissed the appeal.

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 were addressed in the prior appellate decision. We reiterate, 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 an acrobat. At the time of the petition's filing, the petitioner performed at Circus Circus Hotel Casino in Las Vegas, Nevada.

On motion, the petitioner submits letters from two figures in the juggling field, in an effort to demonstrate the petitioner's standing in the field. Counsel states that these letters establish the petitioner's eligibility. Counsel offers no arguments regarding the AAO's prior findings, and therefore we need not revisit those findings here.

Alan Howard, associate editor of Juggle magazine, states that he is "preparing an article about [the petitioner] for the next issue of our magazine." Mr. Howard's letter is dated March 28, 2000, nearly two years after the petition's June 1998 filing date. Mr. Howard's reference to an article which, as of March 2000, was still yet to be published, cannot establish that the petitioner qualified as of June 1998. 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.

Mr. Howard states that the petitioner's "unique and innovative antipod (foot juggling) act" and "the introduction of her original Gyro Wheel routine" place the petitioner "in a category all by herself." This letter is intended to establish that the petitioner is responsible for original contributions of major significance, a regulatory criterion set forth at 8 C.F.R. 204.5(h)(3)(v). While several jugglers have praised the petitioner's antipod and Gyro Wheel routines, attesting to the significance of the petitioner's contributions, a significant original contribution cannot suffice by itself to establish eligibility.

Mr. Howard states that the petitioner received a "tremendous reception last year at the International Jugglers Association convention." Given the March 2000 date of the letter, "last year" evidently refers to 1999. Obviously, the 1998 petition contains no mention of this convention, and the motion provides no first-hand documentation regarding the event.

The other letter on motion is from Brian Dubé, a seller of juggling equipment, who states that "the unique and nearly lost art of foot juggling . . . is virtually unknown in the United States." Mr. Dubé mentions "the uniqueness of [the petitioner's] skills and act" and states that the petitioner appears in "the upcoming book '4,000 Years of Juggling'" but otherwise he limits his comments to general observations about foot juggling. Even if 4,000 Years of Juggling had been published in time to be considered for a 1998 filing date, the record does not indicate the extent of coverage that the

beneficiary receives in the book. A promotional flier indicates that the book includes a chapter on foot juggling. While this flier states "Pub. Date: Late Fall, 1997," Mr. Dubé's April 9, 2000 letter refers to the book as "upcoming"; there is no evidence that the book had been published as of the filing date.

As stated above, events which took place after the petition's filing date cannot retroactively establish eligibility; evidence regarding those events is more appropriately considered in the context of a new petition.

These two new letters, and Mr. Dubé's supporting documentation, support the assertion that the petitioner is responsible for significant contributions to her field, but they do not establish that the petitioner has earned national acclaim as one of the very top acrobats or jugglers in the United States. Many of their specific claims regard events which occurred after the filing date, and which are not directly documented at all in the record.

For the above reasons, the newly-submitted evidence on motion does not establish that the petition was approvable at the time of filing, or that the director or the AAO erred in denying the petition.

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 March 29, 2000 is affirmed. The petition is denied.