U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC-99-255-54020 Office: California Service Center Date: JUN 17 2002

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)

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, California 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 that she qualifies as an alien of extraordinary ability in her field of endeavor.

On appeal, counsel asserts that prior counsel did not submit all of the documentation that the petitioner had given him. The petitioner submits voluminous documentation, much of which was previously submitted.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that

the petitioner must show that the beneficiary 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 acrobatics instructor and director. The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record does not indicate that the petitioner has met three of the necessary 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 was an acrobatic performer, but in 1987 began instructing and directing other acrobats. As such, any awards won as a performer are not evidence of sustained national acclaim as they were awarded more than 12 years before the petitioner filed the instant petition. Such awards, however, do reflect on the petitioner's knowledge and abilities in acrobatics generally. The record also contains evidence that the petitioner's students have won awards. Awards won by performers directed by the petitioner can be considered comparable evidence for this criterion.

Initially, the petitioner submitted uncertified translations of several certificates. Two of the certificates, dated October 1989 and January 1990, from the Cultural Association of Beijing Municipality verify that the petitioner created and directed "Three people through hoop" and "rolling cup" which won "Golden Awards" in the First Italy National Acrobatic Competitions. Another certificate, from the same association and dated November 1997, verifies that the petitioner created and directed "soft-wire walking" which received the Golden Bear Award in the Red Square International Acrobatic and Circus Competition of Moscow. The remaining certificates from the Cultural Bureau of Beijing Municipality reflect that the petitioner received first prize in the Excellent Teachers Appraisal for her outstanding achievements as an art teacher in 1990 and 1995.

On February 15, 2001, the director requested evidence regarding the significance of these awards. In response, the petitioner submitted her own declaration asserting that 16 countries competed in the Red Square International Acrobatic and Circus Competition of Moscow. The inclusion of competitors from more than one country does not automatically render the awards internationally *recognized.* She also asserts that the Italy competitions are limited to juveniles. The petitioner also claimed for the first time to have coached students who won awards at the Paris Future International Acrobatic and Circus Competition.

On appeal the petitioner submits a certificate for "China's Best Contribution Reward of Acrobatic Artists" awarded by the People's Republic of China Culture Section in June 1997. Counsel asserts that this was the first time such awards were given and that the petitioner was one of ten to win the award. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner did not submit evidence to support counsel's assertions. The petitioner submits a photograph of TV announcer Du Hongxia allegedly reporting the petitioner's win. A photograph of

a television news anchor reporting an unknown story is not evidence that the petitioner's award received media attention.

The uncertified translations suggest that the petitioner personally received awards both as a performer and in recognition of her contributions to acrobatics long after she stopped performing. Moreover, they suggest that petitioner's students have won top awards in competitions where performers from several countries competed. 8 C.F.R. 103.2(b)(3) requires that all foreign-language documents be accompanied by a complete English translation certified by the translator. Without certified translations, the award certificates have little evidentiary weight.

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 response to the director's request for additional documentation, the petitioner submitted a certificate evidencing her membership in the [redacted]. As stated by the director, she provided no evidence of the membership requirements for that association. Thus, the director concluded that she did not meet this criterion.

On appeal, counsel argues that election to membership in the International Brotherhood of Magicians "establishes one to be a part of highest recognized performers throughout the world, such as [redacted] and [redacted]." The information submitted on appeal, however, does not indicate that outstanding achievements are required for membership. That an organization has well-known members does not necessarily imply that the organization requires such notoriety for membership. In fact, the materials submitted by the petitioner on appeal state, "international and local memberships are open to anyone 12 years or older who have a sincere interest in the art of magic." Thus, the information submitted on appeal does not overcome the director's concerns regarding this criterion.

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.

Initially, the petitioner submitted an uncertified translation of a brief biography published in *The Famous Figures of The Contemporary Arts Circles in China.* The record does not contain the date of this publication. The petitioner also submitted copies of a photograph and brief biography published in *People Pictorial* in 1983. A publication from 1983 is not evidence of sustained acclaim at the time of filing, 16 years later, even though it appears that her picture was also published in a 35th anniversary edition as one of two acrobats. Moreover, the publication appears to be similar to a tourist brochure. We cannot conclude that promotional tourist publications are major media. Finally, the introduction to the Literary and Art Circle section asserts that while the publication "reports outstanding personages . . . who bring forth new ideas to their areas," some of those pictured are merely "hardworking teachers."

In response to the director's request for evidence, the petitioner submitted a copy of her picture published in *Pictorial Highlights of Cultural Exchanges* in 1985. As stated above, a publication from 14 years prior to the date of filing cannot be considered evidence of the petitioner's sustained acclaim. Moreover, it does not appear that she is identified personally. Rather, the caption reads, "Wire-walking performed by Chengdu Acrobatic Troupe." The petitioner also submitted a letter from the Overseas Chinese Association of United States World Person Press advising her of their desire to include her in their edition of *Who's Who in the World in 2000*. She also submits a copy of her entry. The petition was filed in 1999. Anything published about the petitioner after the date of filing cannot be considered evidence of her eligibility at the time of filing. Finally, regarding all of the above biographies, appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim.

The petitioner also initially submitted an article about her published in the Hong Kong publication *China Commercial News* in 1993. The petitioner submitted no evidence regarding the circulation of this publication. As the petitioner has not submitted evidence to establish that the publications which printed information about her are major media, she has not met this criterion.

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.

In response to the director's request for additional documentation, the petitioner submitted a certificate appointing her as an consultative editor for the *World Cultural Celebrity Dictionary*. The petitioner also submitted a letter fro[redacted]of the Chinese Acrobatic Troupe, asserting that the petitioner served as a council member in the First Council of the Chinese Acrobats Association Conference and that she judged the Acrobatic Contest of Central-Southern Region of China in 1996. The petitioner further submitted the list of judges for the Fifth China Wuqiao International Acrobatic Festival. The complete list of judges includes high level circus officials from various countries. The promotional materials provide that the competition included 290 performers from 20 circuses and 14 countries and regions. The materials also indicate that out of the 27 competing programs, two thirds (18) won awards in "fierce competition." Nevertheless, the director concluded that the petitioner had met this criterion and we concur.

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

Initially, the petitioner submitted copies of a photograph and brief biography published in *People Pictorial* in 1983. The uncertified translation of the biography states that the petitioner's "unique skills such as forward and backward soft somersault and forward and backward somersault in the air on hard wire make great contribution to the program of 'Wirewalking.'" The uncertified translation of the petitioner's biography in *The Famous Figures of the Contemporary Arts Circles In China*, and the article about her in *China Commercial News* also praise the petitioner's abilities on the wire, asserting that the petitioner is widely known for this talent and that others have been unable to duplicate her stunts.

The petitioner also submitted a letter from [redacted] manager [redacted] asserting that the petitioner visited Australia many times between 1991 and 1998 and improved the acrobatic acts at his company through her directing and editing. The petitioner also submitted a letter from [redacted] praising her skill as a performer and as an art director. [redacted] provides no explanation of his qualifications to judge the petitioner's skill.

In response to the director's request for additional documentation, the petitioner submitted several letters in support of the petition. The translations of the Chinese-language letters are not certified. [redacted] President of [redacted] and a former student of the petitioner's, asserts that the petitioner is the sole acrobat to have performed the forward and backward somersault on the walking wire. He also praises her coaching ability, noting that under her direction he won two gold medals, one in Paris and one in the International Children's Contest.

[redacted] award winning students of the petitioner's, provide general praise of the petitioner's skills as a performer and coach. The petitioner submits a letter from another student, [redacted] on appeal. [redacted] the Head of the Chinese Acrobatic Troupe, asserts that the petitioner is a "remarkable" performer and "successful" coach. [redacted] folklorist retired from the Chinese Folk Artists' Association, asserts that he knows the petitioner through her performance and one of her relatives. Being a folklorist friend of the family is insufficient qualification for [redacted] evaluate the petitioner's abilities. Moreover, he describes her generally only as "excellent." [redacted] with [redacted] in Oregon praises the petitioner and invites her to teach at his center [redacted] Director at the Oregon History Center, provides general praise of the petitioner as a performer, asserting that she is uniquely capable of some stunts, and as a coach. Aislinn Scofield, Outreach/Public Programs Coordinator for the [redacted] provides general praise of the petitioner's performing abilities. She does not indicate how she became familiar with the petitioner's work. [redacted] Association, asserts that the petitioner is able to teach U.S. artists Chinese techniques. Finally, [redacted] of the Far East Circus and Association which contracts with [redacted] Las Vegas, and Disney in Orlando, asserts that the petitioner gives instruction to his performers and that he would like to hire her should she become a permanent resident.

The director concluded that the petitioner had not submitted sufficient evidence of her purported contributions to the field of acrobatics.

As discussed above, on appeal the petitioner submits a certificate for "China's Best Contribution Reward of Acrobatic Artists" awarded by the People's Republic of China Culture Section in June 1997. Counsel asserts that this was the first time such awards were given and that the petitioner was one of ten to win the award, but the record does not support these assertions. Further, as stated above, *People Pictorial* reproduced the petitioner's picture from their 1983 issue in their 35th anniversary edition.

While the uncertified translations suggest that the petitioner has contributed to her field, without certified translations, the foreign-language documents have little evidentiary weight.

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

The director appears to have conceded that the petitioner met this criterion. It is inherent to the field of acrobatics to perform. Merely performing is evidence of employment or, at best, success. It is not evidence of national or international acclaim. Moreover, circuses and related performances are not artistic exhibitions or showcases. As such, we conclude that the petitioner has not met this criterion.

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

The petitioner submits a program for the Peking Acrobatic Troupe of China. Even if the information regarding the group established that it was distinguished, it lists the petitioner as one of several performers. She is listed as performing in one act, whereas other performers are listed as performing in more than one act. In response to the director's request for additional documentation, the petitioner submitted what appears to be an uncertified translation, although it is not clear the original source of the text. The uncertified translation asserts that "the world's leading programs of the [Chinese Acrobatic] [T]roupe include 'forward and backward flip' over the walking wire." Without evidence of the source of this text, the uncertified translation carries little if any evidentiary weight. The director concluded that the petitioner had not established that she played a leading or critical role for an organization with a distinguished reputation. On appeal, counsel does not challenge this conclusion and we concur with the director.

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

In response to the director's request for additional documentation, the petitioner submitted a contract whereby she and [redacted] purchased a house in Las Vegas for $425,000. The petitioner also submitted a 1988 employment contract between her and the Chinese Acrobatic Troupe listing the amount of compensation for each award won by the program which she directed. The highest compensation listed is $5,000 for an international gold award. The petitioner also submitted an unsigned declaration and a tax assessment affirming that she earned 940,000 Hong Kong dollars between April 1992 and March 1993. The petitioner, however, has not submitted any evidence of the salary range for other acrobats at the top of their field. On appeal, the petitioner submits a contract between at the Chinese Acrobatic Troupe dated August 2, 2000 for 23,000 Hong Kong dollars per month. The petitioner did not submit any evidence of other high end salaries for acrobats with which to compare her own. Moreover, the contract is dated after the date of filing; as such, it cannot establish her eligibility at that time. Without evidence by which we can compare the petitioner's salary with other highly paid acrobats, the petitioner cannot establish that she meets this criterion.

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

On appeal, 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.

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. As stated above, all foreign-language documents must be accompanied by complete certified translations. Much of the evidence discussed above consists of foreign language certificates for which the petitioner failed to submit certified translations.

Review of the record does not establish that the petitioner has distinguished herself as an acrobatics director 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 as an acrobatics director, but is not persuasive that the petitioner's achievements set her significantly above others in her 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.