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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-99-226-52604 Office: California Service Center Date: JUN 17 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, 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. 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an acrobat. 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.

The petitioner submitted three certificates from the [redacted] of the People's Republic of China, with translation. The first certificate affirms that his act, [redacted] won the [redacted] at the [redacted] in September 1995. The second certificate certifies that the petitioner won [redacted] for his act, [redacted] in May 1991. The third certificate affirms that in 1988 the petitioner won a [redacted] his program "strap."

The petitioner also submitted evidence of a regional competition at which his troupe received awards. [redacted] of the Fourth Chinese National Northeast District Preliminary Acrobatic Match confirms that the petitioner's act "Bunqee" won First Prize in May 1995. Regional and provincial awards cannot be considered evidence for this criterion.

The petitioner submitted evidence of the Shenyang Acrobatics Troupe's competition at the Monte Carlo Festival International du Cirque in February 1996. Below the copy of the certificate are Chinese characters that do not appear to be part of the official certificate. The petitioner provided a translation of the Chinese[1] which asserts that the petitioner's act, "Bunqee" won the Silver Clown Prize. The official certificate from the Monte Carlo festival, while not translated, does not appear to make any mention of a prize. Without evidence of the source of the Chinese characters, the petitioner cannot establish that his troupe won a prize at the 1996 festival. Evidence of an award should derive from the organization that issued the award.

The petitioner also submitted a certificate from the Festival Mondial de Demain. While the petitioner did not provide a translation of the French award certificate, it references "Medaille d'or" and the "Troupe de Shenyang." Once again, below the copy of the certificate are Chinese characters which are not clearly part of the original certificate. The author of these characters is unknown. The petitioner provided a translation of the Chinese which asserts that the petitioner's act, "Bunqee" won the golden prize at the 19th France Tomorrow International Acrobatic Festival on January 29, 1996. The word "Bunqee" does not appear on the certificate itself.

The director concluded that the petitioner had not submitted sufficient evidence regarding the significance of his awards. On appeal, counsel asserts:

> Every one in the circle of acrobatic art knows that both the Monte Carlo International Acrobatic Match and the France International Tomorrow Acrobatic Festival are the biggest and most high-ranking acrobatic competition[s] in the world.

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[1] The translator's certification indicates that she is fluent in Chinese and English but makes no mention of French. Moreover, the English does not appear to be a word for word translation of the French. As such, it is assumed that the translation provided is of the Chinese characters appearing below the certificate.

Counsel further asserts that the Service should inquire as to the significance of the awards on its own, although counsel states he will supply additional information in a subsequent submission. The petitioner's subsequent submission did not include any information regarding the awards.

As stated above, the petitioner has not established that his troupe won any awards in Monte Carlo in 1996. Moreover, it is the petitioner's burden to establish the significance of his evidence. The record does not include any information regarding the significance of the French competition.

In response to the director's request for additional documentation, the petitioner submitted the following documentation which counsel now denies the petitioner submitted. Specifically, the petitioner submitted a German program with five photographs, one of which is a photograph of an award statue from the 1987 Festival International du Cirque. The program is included in Exhibit 3. In his brief accompanying this submission, counsel refers to Exhibit 3 as follows:

> In Germany his acrobatic program was acclaimed by Germany [sic] people and even fully recognized by Germany [sic] [redacted] (please refer to the attached picture and translation).

The first document in Exhibit 3 is entitled "Excerpt Translation from German to English: I want to be the Circus-Director." The uncertified translation provides that the President of Germany issued "souvenirs" and "an Award" to the petitioner's troupe in 1990. Finally, the translation includes the following description of five photographs, which is not in the original German:[2]

> The pictures show 1) the German President Richard von Weizaecker and his wife with the performers of the Great Chinese National Circus Troupe; 2) performance of this circus troupe "Jumping Through the Hoop;" 3) performance "Bunqee" 4) performance "Jumping Through the Hoop[; and]" *5) International Golden Prize Trophy for [the petitioner] and his work Bunqee Act.*

(Emphasis added.) Following this document are three pages of color photocopies of a German program. The photograph labeled "5" is of a golden statue. Taped over the German caption is a label that states, "International Gold Prize Trophy for [the petitioner's] Bunqee Act." As stated by the director, the engraving on the statue in photograph 5 indicates that the statue was presented to the Shenyang troupe at the 1987 Festival International du Cirque in Monaco. As implied by the director, the petitioner has submitted no evidence that he competed with the Shenyang troupe at that competition.

On appeal, counsel asserts that no documentation was submitted regarding the 1987 Festival International due Cirque and concedes that the award is not one given to the petitioner. Counsel's denial of submitting this documentation is inexplicable. The photograph of the statue is specifically labeled as pertaining to the petitioner (although the original German under the label makes no

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[2] The photographs in the original German program are not numbered.

reference to the petitioner) and counsel specifically refers to the exhibit in his previously submitted, signed brief. Most perplexing of all, the petitioner resubmits a photocopy of the statue on appeal which counsel once again references as "attached exhibit 3" in his appellate brief. Counsel asserts on appeal that this exhibit will confirm that the award was issued in Germany in 1990. This assertion only is valid if the Service relies on the uncertified translation[3] and not on the clearly legible engraving on the statue itself. Regardless of the reason for counsel's inconsistency regarding this "award," counsel's credibility is severely diminished. The director's observation that the award did not represent an award won in Germany in 1990 is not error, as asserted by counsel on appeal, but justified by the implication in the uncertified translation quoted above that the statue represented an award from Germany.

In light of the above, the petitioner has not demonstrated that he meets this criterion.

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 his membership certificate for the International Brotherhood [redacted] and a letter addressed to him by the American Federation of Television and [redacted] which begins, "dear member." As stated by the director, the petitioner failed to submit the official membership requirements for these associations. On appeal, the petitioner submits materials regardi[redacted]nd [redacted] The materials fo[redacted]ndicate that an active member must be at least 18 years old and have been interested in magic for at least two years. One's age and interest in a field are not outstanding achievements. The application requests one's status. The choices are full-time professional, part-time professional, amateur, beginner, and collector. An organization which grants memberships to beginners in the field cannot be considered to require outstanding achievements of its members.

The materia[redacted]ndicate that it is a national labor union affiliated with the [redacted] addition, the question and answer section of the materials reveals that "any person who has performed or intends to perform [redacted]risdiction is eligible for membership." A union is not an exclusive organization that requires outstanding achievements in the field. Rather, it is a labor organization that represents those who work in the field. Moreover [redacted]s open to anyone who intends to perform in the organization's jurisdiction. An intention to work is not an outstanding achievement.

Finally, the petitioner submits on appeal his membership with the [redacted] This membership is utterly unrelated to his acrobatic field.

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[3] Moreover, while not the basis of our decision, our review of the original German text reveals that it does not state or imply that the [redacted] won an award in Germany.

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 article published in the Chinese-language *Las Vegas Chinese New Year Special, a Travel Monitor to Las Vegas*. The petitioner failed to submit a complete translation. The uncertified partial translation summary provides:

> The article is mainly about what an important role [redacted] plays in the "Imagine" show at the [redacted] [The petitioner] is the key star acrobat of the act "Bunqee." The troupe has signed a three-year contract with one of the top-flight entertainment companies in Vegas --- [redacted]

It is not clear that the article itself includes all of this information. Moreover, the publication does not appear to constitute major media. The publication appears to be a local publication designed to promote tourism in Las Vegas, suggesting the "articles" are essentially advertisements. Moreover, a publication published in a language the majority of the national population cannot comprehend cannot be considered major media.

In addition, the petitioner submitted two reviews of the Imagine show by Penny Levine. One of the reviews appears to be printed in *Showbiz* while the source of the other review is unknown. Reviews of the entire show which fail to even name the petitioner and appear in local publications are not published material about the petitioner in major media.

The petitioner also submitted a program for Imagine. Programs, while printed, are not published material and are clearly not major media. The petitioner also submitted a foreign-language article from an unknown publication with no translation. This article does not meet the plain language requirements of the regulations, which require the name of the publication and a complete translation. The petitioner further submitted an article allegedly from a "local Japanese newspaper which tells the readers what a fantastic act [the petitioner] did in the show." Once again, the petitioner failed to include a complete translation. As such, the petitioner has not established that the article is primarily about him. Moreover, a local Japanese paper is not major media.

In response to the director's request for additional documentation, the petitioner resubmitted the aforementioned foreign-language article with an uncertified "excerpt translation." The list of exhibits asserts that the article was published in the *Asian Weekly News*. According to the uncertified translation, the article simply reports that Bunqee, performed by the former [redacted] Acrobatic Troupe of China, is appearing at the Luxor Hotel in Las Vegas. The petitioner is not mentioned by name. In fact, the article asserts that [redacted] is the leader of the troupe and that the troupe has included such famous acrobats as [redacted] Moreover, the petitioner has not provided any evidence as to the circulation of the publication. As such, the petitioner has not established that *Asian Weekly News* is major media.

The director concluded that the petitioner had not submitted published material primarily about himself in major media. Counsel does not challenge this conclusion on appeal, and, for the reasons stated above, we concur with the director.

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

Initially, the petitioner submitted a letter from [redacted] the president [redacted] the petitioner's agent. [redacted] asserts that the petitioner's style is unique and unusual and that he has won the admiration of audiences of the "Imagine" show at [redacted] Las Vegas. He further asserts that the petitioner will contribute to the U.S. economy and tourist business. In a second letter, [redacted] the Las Vegas Flyers Olympian Gymnastics Academy, provides general praise of the petitioner. The petitioner also submitted a letter of appreciation from a venue where he performed. While complimentary, these letters are not evidence of the petitioner's contribution to the field. They did not establish that the petitioner had accomplished feats which have influenced the world of acrobatics or to which other acrobats aspire. Nor did the record reflect that the petitioner had developed any new acrobatic techniques widely adopted in the world of acrobatics.

In response to the director's request for additional documentation, the petitioner submitted new letters [redacted] The new letters provide similar information to that provided initially. The petitioner also submitted another letter from a venue where the petitioner's troupe had performed expressing their appreciation and a letter from a council member of the City of Cupertino asserting that the petitioner's performances were impressive.

The director concluded that the record did not establish that the petitioner had made an original artistic contribution in his field.

On appeal, counsel notes that [redacted] the petitioner's residence in the United States will contribute to the U.S. economy and tourist business. Such contributions are not contributions of major significance *in the petitioner's field.* None of the above letters provide any specific examples of how the petitioner has contributed to the field of acrobatics. There is no evidence that he has influenced other high-level acrobats beyond his immediate circle of colleagues, that he is credited with developing a technique widely adopted in the field, or that he performs a unique and difficult stunt to which others aspire.

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

Throughout the proceedings, the petitioner has submitted photographs from several performances and counsel argues that the petitioner's performances around the world serve to meet 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.

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

Counsel refers to the programs, letters from venue owners, the letter from the petitioner's agent and large cast photos as evidence for this criterion. In response to the director's request for additional documentation, counsel asserted that the petitioner has played a leading role for the [redacted] While the record contains some evidence that the [redacted] is award-winning[4] and that both troupes are appreciated at the venues where they perform, the petitioner has not fully established that the troupes have a distinguished reputation. Even if we accepted that the petitioner's troupes have a distinguished reputation, the record contains no evidence that the petitioner has played a leading or critical role for either troupe. The article in the *Asian Weekly News* identifies [redacted] the leader of the Shenyang Acrobatic Troupe. The program from Beijing merely indicates that the petitioner performed in two of eleven acts during that performance. At no point in his letter does [redacted] assert that the petitioner, one of numerous performers that Osaka Production, Inc., USA represents, serves a leading or critical role for the company.

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

Initially, the petitioner did not submit any documentation to address this criterion. In response to the director's request for additional documentation, the petitioner submitted a letter from [redacted] reflecting that the petitioner earned a $3,260 monthly salary. The director concluded that submitting evidence regarding the petitioner's salary alone is insufficient to establish that the petitioner's remuneration is significantly high as compared with others in the field. Despite the director's specific statement that evidence of the petitioner's income alone is insufficient, the petitioner submitted no evidence of the remuneration of others in the field, including the top performers. Rather, the petitioner submitted a letter [redacted] at Great Wall Acrobatic, Inc. offering him a position for $50 per hour. The letter is dated June 11, 2001, after the petition was filed. As such, and because it is only an offer of future employment, it cannot be considered evidence of the petitioner's eligibility as of the date of filing. The petitioner also submitted a picture of himself and an airplane which counsel asserts picked him up to make special performances throughout the United States. That the petitioner flies to his scheduled performances is not evidence of remuneration. It remains, the petitioner did not submit any evidence of the salaries of other high level acrobats. As such, the petitioner has not established that his salary is significantly high for the field.

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

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[4] As stated above, the petitioner has not established the significance of the awards presented to the troupe.

The petitioner submitted a ticket for the Imagine show at the [redacted] reflecting a price of $39.95. As stated by the director, the ticket price cannot demonstrate the commercial success of the show as it does not demonstrate how many people bought tickets. Moreover, the petitioner has not demonstrated that he personally was responsible for the success of the show at the Luxor Hotel. For example, the record contains no evidence that the show was promoted with the petitioner's name receiving top billing or that the [redacted] popularity increased when the petitioner was known to be performing.[5] Counsel did not challenge the director's conclusion on this criterion on appeal and we concur with the director for the above reasons.

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 acrobat 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 indicates that the petitioner shows talent as an acrobat, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.

[5] As the petitioner has not established that he played a leading or critical role for his troupe, evidence that the Imagine show itself was successful or increased the popularity of the Luxor Hotel would be insufficient to demonstrate commercial success for the petitioner.