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Immigration and Naturalization Service

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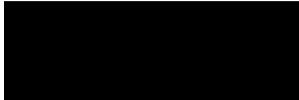


File: EAC 00 088 51423

Office: Vermont Service Center

Date: 28 MAR 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:



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

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(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.

The petitioner is 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.

A 1978 award that the petitioner won appears to be local rather than national or international; the award was sponsored by the Tianjin City Cultural Bureau, and there is no evidence that acrobats from outside of Tianjin competed. Similarly, documentation in the record indicates that the petitioner "received the Performance Special Award in the 1997 Chinese (Tianjin) Dragon Lion Dance Invitational Tournament."

In 1988, the petitioner was a member of a team of acrobats that competed at the 13th Monte Carlo International Circus Acrobatics Competition. Ying Tang, who selected the petitioner to participate in the event, states that the event was the "highest international competition at that time," and that the team took second place, winning a Silver Clown Award and the Development of Circus Art Association Award. Other witnesses also attest to these awards.

Quan Gen Hou, director of the Chinese Acrobatic Artists Association and president of the Tianjin Acrobatic Artists Association as well as head of the Tianjin Acrobatic Troupe, states that the petitioner "received a 'Silver Lion Award' in the 1987 Nationwide Acrobatic competition" as well as the aforementioned Silver Clown Award.

Yi Hong Zhang, vice president and secretary of the Shanghai Acrobatic Association, states in a letter that the petitioner "won the Gold Medal Award in the Monte Carlo International Acrobatic Competition." The letter does not indicate when the petitioner won this gold medal, which no other witness has mentioned. This vague and unsubstantiated assertion does not constitute evidence or documentation of any award.

The Silver Lion Award appears to represent the petitioner's strongest claim of a national or international award, but the evidence regarding this award is somewhat sparse and ambiguous. For instance, the record contains no documentation from the awarding entity in Monaco, nor does the record contain independent documentation regarding the award from entities with no connection to the petitioner. The award appears to have been presented to an entire performing troupe, rather than to the petitioner individually, and nothing in the record reveals the extent to which the petitioner, as an individual, was responsible for the group's receipt of the award.

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 asserts that the petitioner "has had considerable material concerning himself and his work appear in the media." The record contains copies of some published materials, but these do not satisfy the criterion for a number of reasons. The record does not identify the source of the published materials, as required. Some of this evidence appears to represent promotional materials rather than independent media coverage. Also, the materials discuss the entire acrobatic troupe to which the petitioner then belonged, with no mention of the petitioner as an individual.

Handbills distributed at acrobatic performances do not constitute national or international major media, nor are we persuaded that the distribution of these printed programs constitutes "publication" in a meaningful sense.

One single-page document, entitled Easter at the White House, is a souvenir of the 1989 Easter celebration on the White House lawn. The petitioner's face appears in the center, with the headline "Young Dignitary Enjoys a Family Easter in Washington," but the petitioner's appearance in the photograph does not establish that the document is published material about him. A note at the bottom of the document reads "[t]he personalized picture in the middle was printed using the Hewlett Packard LaserJet Series II." Clearly, the document is a novelty souvenir prepared from a template and custom-printed with a "personalized picture." We note that the text of the document mentions that circus performers participated in the event, but the petitioner's name appears nowhere in the text, nor does the text indicate that the person depicted in the photograph is one of the circus performers. Thus, even if this document had been widely circulated with the petitioner's photograph, it is not about his work in the field because it never identifies the petitioner at all, much less as an acrobat.

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

Counsel states that the petitioner "has performed his work in the field of Chinese acrobatics at major and highly regarded venues." The petitioner submits copies of identification cards, showing that he performed with Ringling Bros. and Barnum & Bailey Circus in 1988 and 1989. The record does not establish the petitioner's billing during circus performances, nor does it otherwise establish that the petitioner played one of the most significant roles in these performances. While Ringling Bros. and Barnum & Bailey is indisputably one of the most famous circus companies in the United States, it does not follow that everyone who performs with that circus has earned sustained national or international acclaim.

The petitioner's most recent work, according to documents in the record, has been primarily at schools and Chinese cultural centers in the New York metropolitan area. The petitioner has not established the national reputation of these venues, or that his performances have had a higher profile than nearly all other acrobatic performances in the U.S. during the same period.

Beyond the above criteria, Yu Lu, director of the Performing Arts Division of Art Resources for Teachers and Students, Inc., New York, New York, deems the petitioner "one of China's greatest traditional acrobats" and "a world-renowned Chinese acrobatic artist . . . who is perhaps the most important and well-known Chinese traditional acrobat now active." There is no detailed explanation for this conclusion, nor does the record establish this witness' standing to attest to the petitioner's standing among Chinese acrobats.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director specifically requested evidence that the petitioner has earned a high salary in recent years, and evidence "detailing plans on how [the petitioner] intends to continue his/her work in the United States." The

director requested specific information regarding publications that have carried material about the petitioner, and evidence that the petitioner's acclaim has been sustained.

In response, the petitioner submits documentation regarding his employment and activities during 1999 and 2000. The petitioner also submits a statement from counsel. Counsel asserts that the petitioner's "national awards in acrobatics from China, and the international awards at the Monte Carlo International Circus Festival . . . have no equivalent counterparts in the U.S." Counsel offers no documentation that would establish the reputation of the petitioner's awards, or allow a meaningful comparison between the petitioner's awards and awards that are familiar in the U.S., such as (for instance) Olympic medals or the Grammy Award. While these awards are not acrobatic awards, they are nevertheless well-known and therefore a persuasive comparison between a well-known U.S. award and the petitioner's awards would have weight.

Baoan Cao, executive director of CBA Culture & Arts Center, Elmhurst, New York, indicates that the petitioner "has been employed by this organization as a traditional Chinese acrobatic performer" who "earns an average salary of \$1200 per month." The petitioner has not shown that only the top acrobats earn this salary, which amounts to \$14,400 per year.

The petitioner submits documentation regarding his recent performances in the northeastern U.S., primarily in the New York area. Many of the venues appear to be schools and cultural centers, one of which awarded the petitioner a plaque in May 2000. None of this evidence establishes a national reputation, or any recognition outside of the Chinese community in the northeastern United States. The only media coverage documented in this submission is an article in a Chinese-language newspaper. Much of the promotional material regarding the petitioner's performances is likewise in Chinese, indicating that the petitioner's reputation is largely confined to the Chinese immigrant community.

The director denied the petition, stating that the record does not set the petitioner apart from others in his field, or establish that the petitioner has had a greater impact on his field than other acrobats.

On appeal, counsel states that the director should have approved the petition, because the director acknowledged that the petitioner has met at least three of the ten criteria set forth at 8 C.F.R. 204.5(h)(3). The director, however, did not state that the petitioner had met at least three criteria. The director stated that the petitioner "meets some of the above criteria," which does not necessarily mean three or more. Also, the director indicated that one can submit evidence that pertains to a particular criterion without satisfying it to an extent that indicates sustained national or international acclaim. The director acknowledged the petitioner's awards and media coverage, but even the most generous reading of this portion of the decision would demonstrate satisfaction of only two criteria. The director then plainly stated that the evidence regarding those factors do not establish sustained acclaim. The director then spelled out several evidentiary shortcomings in the record, which counsel has not addressed on appeal.

Apart from the two criteria above, pertaining to prizes and published material, counsel asserts that the petitioner has satisfied a third criterion through "[p]erformances at major & highly regarded national & international venues." There is no such criterion, however, in the regulations. There is a criterion relating to leading or critical roles for organizations or establishments with distinguished

reputations, but the petitioner has not shown that his roles were leading or critical. There is also a criterion relating to commercial success in the performing arts, but the petitioner has submitted no documentation to show that he is among the most commercially successful acrobats in China, the U.S., or elsewhere. The petitioner cannot overcome these deficiencies by devising a new category and claiming to have fulfilled it.

Counsel's appellate statement contains several unsubstantiated claims, such as the assertion that the petitioner won "the highest prize" in his field, and that the petitioner "has consistently appeared on TV and in the newspapers." The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

We note that the statute and regulations require evidence of sustained acclaim, meaning that evidence of past acclaim cannot suffice if the record does not also show that the petitioner continues to enjoy national or international acclaim. The strongest evidence in the record pertains to the petitioner's accomplishments in the late 1980s. As noted above, the petitioner's reputation in recent years appears to be restricted to a small part of the United States, and even then the petitioner has not established any recognition outside of the Chinese community. Recognition among one such group is not national in scope, because Chinese-Americans constitute only a relatively small fraction of the diverse U.S. population. Certainly the petitioner need not establish acclaim within every possible ethnic permutation, but when acclaim is limited to one such group, or a small number of such groups, it cannot realistically be called "national."

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 is not persuasive that the petitioner's achievements have consistently 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.