

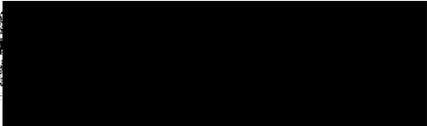


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U.S. Department of Justice
Immigration and Naturalization Service

Identification date deleted in
original clearly inadmissible
application of person's arrest

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D. C. 20536

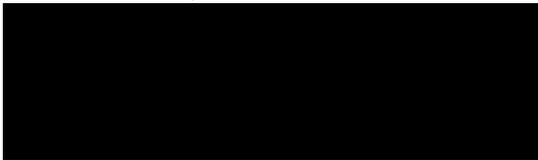


File: WAC-99-138-53089 Office: California Service Center Date: 03 MAY 2002

IN RE: Petitioner: [Redacted]
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:



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 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 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 artist. 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, she 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.

Initially, prior counsel asserted that the petitioner received the Golden Elephant Award, "the grand first place award for her category of performance," at the 1992 Festival of European Young Circus Artists. The petitioner failed to submit any evidence supporting this assertion or regarding the significance of the award. The director concluded that the petitioner had not established that she won the award individually as opposed to being part of an award-winning team.

On appeal, the petitioner submits a letter from Jurgen Disch, the Executive Director of the Wiesbaden Cultural Department. Mr. Disch states that in 1992, the petitioner was invited to attend the Festival of European Young Circus Artists as a "special guest." [REDACTED] continues:

[The petitioner's] performance was t[h]rilling and spectacular. She caused the biggest shock to the audience and judges with performance far better than any other artists [sic]. [The petitioner] was awarded special price [sic] "Ehrenbecher der Landeshauptstadt Wiesbaden" (Golden Elephant) with silver trophy and golden elephant for her incredible performance.

The award certificate indicates that the petitioner, a "contorsion [sic]" performer, was a "special guest" and was awarded a "special price [sic]" for her performance. The materials regarding the competition reflect that the competitors were selected by a selection committee and competed for gold, silver, and bronze prizes in two age groups: 5 to 15 years and 16 to 25 years. As such, the competitors are only competing against their age group, and not experienced experts. The monetary awards range from 500 to 4,000 Dutch Marks. The materials further state, "in addition, several special prizes will be awarded." These materials do not explain the selection process for the "special guests" or the significance of the special prizes. For example, the record does not reflect how many special guests competed for the petitioner's special prize or the amount awarded with that prize. In light of the above, the petitioner has not established that the Golden Elephant represents a nationally or internationally recognized prize for which she competed against national or international experts regardless of age.

In response to the director's request for additional documentation, the petitioner submitted a certification from the American Museum of Natural History, Department of Education. The certificate was issued to the petitioner as recognition "for successful participation as a cultural representative for the program Mongolia Now: Independent Voices." This certificate does not appear to represent a nationally or internationally recognized prize or award for which national or international experts in the field competed. Regardless, the certificate is dated after the date of filing and cannot be considered evidence of the petitioner's eligibility at that time.

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.

Prior counsel asserted that the petitioner meets this criterion through her membership in several touring circuses including Urguu, Mundykhai and Arabeske, and the Union of French Ballet.

The record contains a letter from [REDACTED] the founder of Urguu, confirming the petitioner's participation in that circus. The petitioner also submitted a letter from Tongalag HasOchyr, founder and director of Ensemble Tunga and creator of "Arabeske," a contortionist act involving four contortionists who transform themselves into a statue of Vishnu. [REDACTED] asserts that the petitioner has performed with Arabeske, which has toured internationally. Finally, the petitioner submitted two letters from Gregangelo Herrera, Artistic Director of the Gregangelo and Velocity Circus Troupe regarding her employment with that circus and a letter from Richard Kilman, Vice President of Business Affairs for Cirque Productions confirming the petitioner's employment with Cirque Ingenieux. The record contains no evidence of the petitioner's membership in the Union of French Ballet or its membership requirements.

Recognized national or international experts in the field do not judge the achievements of circus hopefuls. Rather, they are selected for the circus by the equivalent of casting directors, or, in smaller circuses, the owner. While we do not question that auditions to tour with a circus are very competitive, being hired for a job in one's field is simply evidence of an ability to work in one's field. Employment, even in a highly competitive industry, is not evidence of membership in associations which require outstanding achievements of their members as judged by recognized national or international experts.

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 several newspaper articles from Germany and Russia when the petitioner's group was on tour in those countries. The record includes no translations of these articles as required by the pertinent regulation. Nor did the petitioner submit any evidence regarding the circulation of these newspapers. As such, it is not clear that they represent major media.

The petitioner also initially submitted articles in *Tulsa World*, the *Syracuse Post-Standard*, and the *San Diego Union Tribune* regarding her performances with Cirque Ingenieux in the United States. While these articles include discussions of the petitioner's performances, they are primarily reviews of the show as a whole, not the petitioner specifically. Moreover, these papers are primarily local papers with little national circulation. The petitioner also submitted two foreign language papers allegedly reviewing her U.S. performances. Once again, the petitioner failed to include translations or evidence regarding the circulation of these papers.

On appeal, the petitioner submitted photocopies of what appear to be three consecutive magazine covers for the free magazine, the *San Francisco Herald*. The magazine is published every other month and is labeled, "for mature readers." The petitioner is not named on the cover and there is

no evidence that the magazine published any articles about her. Appearing on the cover of a free, local magazine without being named or featured in any of the articles in that issue cannot serve to meet this criterion. The petitioner also submits partial translations of some of the foreign language articles submitted initially. Some of these "articles" appear to be paid advertisements for the petitioner's performances. Moreover, the record still remains absent of any evidence of the circulation of these publications.

Finally, the petitioner has appeared in print advertisements for Dema Clothing. These advertisements cannot be considered published material about the petitioner. Moreover, the petitioner has not established that the advertisements appeared in major media.

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

The record contains numerous letters submitted throughout the proceedings. Many of the letters are from the petitioner's employers or colleagues and provide general praise of the petitioner's talent as a performer and teacher without identifying any specific contributions to the art of contortionists. The only contribution identified is the petitioner's ability to perform while balancing on a mouthpiece. Specifically, Otgoo Waller, a professional contortionist who has toured internationally and appeared on several U.S. television shows, asserts that the petitioner is one of three contortionists in the world who can perform three contortionist stunts while balanced on a mouthpiece. This claim is insufficient. The record contains no evidence that other contortionists have been influenced by this stunt and are emulating it. Nor does the record reflect that the stunt has garnered media attention; none of the newspaper articles mention this stunt.

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

Prior counsel asserted that the petitioner meets this criterion. The director concluded that the tours in which the petitioner participated were not exhibitions primarily devoted to the petitioner. On appeal, counsel argues that the regulation does not require that the exhibition or showcase be arranged primarily to showcase the petitioner. It is not clear that this criterion applies to performing artists. A circus is not an artistic exhibition or showcase. Moreover, it is inherent to the field of circus performing to perform in circuses. Performing in circuses is evidence of the petitioner's ability to work in her field, not her national or international acclaim.

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

Prior counsel asserted that the petitioner meets this criterion because she was the "star" of the Urguu Circus which toured Russia, Poland, and Germany. On appeal, counsel asserts that the petitioner has performed a leading or critical role for the American Museum of Natural History, the SomArts Cultural Center, the Urguu Circus, and the Velocity Circus.

The petitioner performed at events sponsored by the American Museum of Natural History and the SomArts Cultural Center. While these events may have been well received and while the petitioner's image may have been used to advertise the SomArts Cultural Center event, it remains that performing at one event sponsored by an organization is not performing a leading or critical role for that organization.

Gregangelo Herrera, director of Velocity Circus, asserts that the petitioner is responsible for that circus' success. Mashbat Ochir, founder of Uргуu, asserts that he used the petitioner's image in his advertising and that her talent alone carried the circus. The petitioner has not submitted evidence to support these assertions, such as copies of advertisements for these shows or newspaper reviews referring to the petitioner as the star.

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

Mr. Herrera asserts that the petitioner is scheduled to perform in several Velocity shows and that "there will be hundreds of shows and events coming just to have [the petitioner] in them." The record contains no evidence to indicate that the petitioner is responsible for Velocity's success, such as evidence of box office receipts prior to and after the petitioner joined this circus.

In addition to evidence which addresses the above criteria, the petitioner also submitted letters from colleagues in San Francisco. Specifically, the record includes letters from officials of the San Francisco School of Circus Arts such as Lu Yi, the Artistic Director; Xia Ke Min, an instructor; Patrick Osborn, the Executive Director; and Peggy Ford, the Program Director. The petitioner also submitted letters from other performers in the San Francisco area, including those who have appeared on U.S. television shows including the Tonight Show and Ripley's Believe It or Not.

These letters assert that the petitioner has extraordinary talent as a contortionist. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Finally, the remaining evidence submitted on appeal does not relate to the petitioner's eligibility at the time of filing. Specifically, after the date of filing, the petitioner performed for a DVD of stock footage for visual artists entitled "Levitate," and has worked on a Steven Spielberg film entitled, "Minority Report."

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 a contortionist 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 a contortionist, but is not persuasive that the petitioner's achievements set her significantly above almost all 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.