



BA

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



File: EAC-01-130-54246

Office: Vermont Service Center

Date: OCT 01 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. Wehmann, 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. 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 a gymnast, circus performer.¹ 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

¹ The initial submission included evidence almost exclusively related to the petitioner's history as a gymnast. In response to the director's request for clarification, counsel asserted that the petitioner intended to work as a circus performer in the United States.

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.

The petitioner submitted the results of several gymnastics competitions in which she competed. Most notably, she won third place in several events at the Cup of Ukraine in 1995, and third place in the 1995 Good Will Games. Most recently, she received a diploma of sports merits at the Student Games in Sicily in 1997 where she was ranked 12th.

On an unknown date, the Russian State circus issued the petitioner a performer's diploma. The record does not establish that this is a competitive award or, if so, the significance of this award.

Even if we considered the petitioner's gymnastic awards as sufficiently related to her circus work as to serve to meet this criterion, the petitioner must still demonstrate that she has sustained any acclaim attained as a gymnast in the field of circus performing. Regardless, for the reasons discussed below the petitioner has not established that she meets at least two other criteria.

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.

On appeal, counsel asserts without explanation that the petitioner meets this criterion. The petitioner was a member of the Ukraine national gymnastics team from 1993 to 1997. The evidence does not reflect how she was selected as a member of this team. Even if we accepted that national gymnastics team membership is evidence of the petitioner's acclaim as a circus performer, the petitioner's membership ended in 1997. Since that time, the petitioner has worked for two United States circus troupes. A performance troupe, even a competitive one which performs tricks the average person could not attempt, is simply not an association which requires outstanding achievements of its members. Thus, the petitioner has not established that she has sustained any of the acclaim she attained prior to 1998 as a gymnast in the field of circus performing.

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.

The petitioner submits several reviews of the Ringling Brothers and Barnum and Bailey Circus which mention the Rough Riders, with which the petitioner performs. Other articles are about the Cossack Riders with Vidbel's Olde Tyme Circus and the Boulikekov Riders with Ringling Brothers. As stated by the director, however, none of these articles are primarily about the petitioner herself. One of the articles about the Boulikekov Riders identifies another woman,

Sarakul Chalabaeva, as the sole female member of the troupe. As such, assuming the petitioner was ever a member of this troupe, she wasn't when the article was written. On appeal, counsel no longer asserts that the petitioner meets this criterion.

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

The petitioner submitted letters from several gymnasts and coaches, some of them Olympic medallists, attesting to the petitioner's talent as a gymnast. None of these letters explain how the petitioner has contributed to or influenced the field of gymnastics as a whole. Moreover, while the petitioner's circus performing is clearly related to her past as a gymnast, she does not intend to continue in the field of gymnastics as a gymnast or coach in the United States.

Scott O'Donnell, President of Vidbel's Olde Tyme Circus, Inc., asserts that the petitioner was an "exceptional performer" during her time with that circus. Kanat Tachalabaev, Head of the Rough Riders Troupe in which the petitioner performs with Ringling Brothers asserts that the petitioner is the best female trick-horse rider. Several other circus performers with Ringling Brothers, including three members of the high wire walking Quiros family, clown David Solove, aerialist Dolly Jacobs, animal trainer Troy Metzler, and animal superintendent Alex Vargas, also provide praise of the petitioner's work. While these letters attest to the petitioner's professionalism and talent as a performer, they do not explain how she has contributed to or influenced the field of circus performing. There is no evidence, for example, that she personally has developed a new trick being emulated or aspired to by other horse riding troupes.

On appeal, the petitioner submits a new letter from National Circus Chaplain George Hogan praising the skills of the petitioner's fellow troupe member Kanat Tachalabaev. This letter does not appear to relate to the petitioner.

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

On appeal, counsel asserts that the petitioner meets this criterion. While Ringling Brothers may have a distinguished reputation, the petitioner has not demonstrated that she, as a member of one of several acts in several traveling companies, plays a leading role for the circus as a whole. Even if we determined that the Rough Riders enjoy a distinguished reputation, the petitioner is not the founder of this troupe and two members receive higher salaries than her. There is no evidence that she plays more of a leading role than the other members of this talented troupe.

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

Counsel asserts that the petitioner is one of the five highest paid performers in the twelve member Rough Riders Troupe. This assertion is supported by the performance contract indicating that one performer is earning \$750, another is earning \$450, the petitioner and two others are earning \$400,

while the rest of the troupe is earning less than \$400 weekly. The petitioner must demonstrate that her salary is significantly high when compared with others in her field, not simply her own troupe. Even in her own troupe, the petitioner is only earning 53 percent of what the highest paid member earns.

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 circus performer 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 circus performer, 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.