



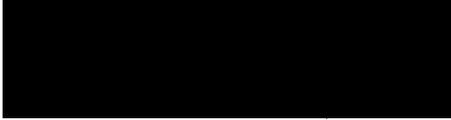
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC 01 245 53659 Office: California Service Center Date: OCT 01 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 sustained and the petition will be approved.

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 athletics. 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, filed on May 22, 2001, seeks to classify the petitioner as an alien with extraordinary ability as an acrobat/duo trapeze artist. The petitioner has submitted several awards from national acrobatic competitions held in the late 1980s. Additional documents reflect that the petitioner last competed at the national level in 1990. The statute, however, requires the petitioner to show that her acclaim has been sustained. This decision will consider whether the petitioner has established national acclaim as a competitive athlete. We will also examine whether the petitioner has sustained her previous acclaim as a competitive acrobat through her employment as a duo trapeze artist for Cirque du Soleil.

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 that, counsel 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.

Five translated certificates from the "Physical Culture and Sport Committee of Moscow" indicate that the petitioner won events in "Sports Acrobatics Women's Pair" competitions at the "Moscow Cup" (1986, 1987 and 1988). The petitioner provides no information about the significance of the Moscow Cup. An additional translated certificate issued in the city of Bryansk states that the petitioner took first place at "the RSFSR Regional Championship in Acrobatics" in the women's pair category (1990). The petitioner's receipt of the above awards appears indicative of local or regional, rather than national, recognition.

More persuasive are two translated certificates from the "Physical Culture and Sport Committee Ministry Union of the U.S.S.R." stating that the petitioner took first place in the "multi-discipline" and "second category" women's pair events "at the acrobatic championships of the U.S.S.R." (1987). In addition, the petitioner submits four certificates from the "State Committee of Physical Culture and Sport of the R.S.F.S.R." The first certificate indicates that the petitioner took first place in the women's pair competition at the "R.S.F.S.R. Championship" in 1986. The remaining three certificates indicate that the petitioner won the first part, second part, and multi-disciplinary events of the women's pair competition at the "34th Championship of the U.S.S.R." in 1988.

A letter from the United States Gymnastics Federation, the exclusive governing body for the sport of gymnastics in the U.S., credits the petitioner with placing second in the 1987 European Championships. The record would have certainly been strengthened by contemporaneous first-hand evidence of this award.

The petitioner's sustained competitive achievements have been verified by letters from the United States Gymnastics Federation, State Committee of Russian Federation of Sport and Tourism, and the Federation of Sports Acrobatics of Russia (the sport's governing body in Russia). Therefore, we find that the petitioner has satisfied this criterion as a competitive athlete.

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.

The petitioner submits a letter from Y.A. Zolotov, President of the Federation of Sports Acrobatics of Russia, stating:

[The petitioner] has been [sic] a member of the Sport Acrobatics Official Combined Team of Russia and the Soviet Union from 1987 to 1990. [T]rained by the meritorious coach of the U.S.S.R., V.D. Litvinov, she attained many tremendous athletic achievements such as prize winner in [the] European Championship, the absolute champion of the Soviet Union and Russia...

The petitioner also submits an identification card issued by the State Committee on Physical Culture and Sport declaring her "Athlete Emeritus of the International Level of the U.S.S.R." While the record would have been more persuasive had the petitioner provided supporting documentation explaining the "Athlete Emeritus" distinction, we find that the petitioner's selection to participate on the Russian national team and represent her country at the international level is sufficient to satisfy 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 provides a letter from Cirque du Soleil which states: "[The petitioner] joined Cirque du Soleil's production of "O" on December 28, 2000... and performs in the Duo Trapeze segment in "O"... This theatrical production runs ten times per week at the Bellagio Casino Hotel and constantly plays to sold out audiences."

Vitaly Marinitch, Head Gymnastics Coach at the U.S. Olympic Training Center in Colorado Springs, Colorado, states:

[The petitioner] was offered employment with Cirque du Soleil, a circus that has quickly established tremendous reputation throughout the world. [The petitioner] currently works in Cirque du Soleil's show "O" at the Belagio Hotel and Casino in Las Vegas, Nevada. When I watched [the petitioner] performing in the show, I was very impressed with her ability to act and do really hard tricks at the same time. She definitely plays a very important role in the show.

The petitioner also submits information reflecting that since Cirque du Soleil was formed in 1984, it has won numerous awards and distinctions from various national and international organizations for originality and excellence. Additional documentary evidence confirms the petitioner's leading role in the show. In this case, the petitioner has shown that she plays in a starring role for a major Cirque du Soleil production. Therefore, the petitioner meets this criterion.

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

The petitioner submits a letter from Ian Alvernaz, Human Resource Representative, Cirque du Soleil. His letter states that the petitioner receives an annual salary of \$69,020. Counsel states that because the Bureau of Labor Statistics provides no occupational information for circus acrobats, the occupational category most appropriate for comparison with the petitioner would be actors. Counsel cites salary figures for actors from the Bureau of Labor Statistic's "2000 National Occupational Employment and Wages Estimates." According to estimates from the Bureau's web site, the median annual wage in 2000 for an actor was \$25,920 and the mean annual wage was \$41,570. Counsel's use of median and mean salary statistics, however, is not a proper basis for comparison. The petitioner must offer evidence showing that her salary places her at the very top of her field, not in the top half. The petitioner has offered no evidence to demonstrate that her salary is high when compared to the salaries of other highly paid circus acrobats.

In this case, the petitioner has satisfied three of the lesser criteria as an acrobatic competitor and performer. The petitioner has produced evidence from top coaches, athletes, and officials from both the United States and the former Soviet Union. The record contains credible evidence of the petitioner's sustained national acclaim as an acrobat. Pursuant to the statute and regulations as they are currently constituted, the petitioner qualifies for the classification sought.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the totality of the evidence establishes an overall pattern of sustained acclaim and extraordinary ability. The petitioner has established that she has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of expertise. The petitioner has also established that she seeks to continue working in the same field in the United States and that her entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.