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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: EAC 00 051 50596 Office: VERMONT SERVICE CENTER Date: DEC 18 2003

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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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 Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted and the petition will be denied on its merits.

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.

On appeal, counsel stated that a brief would be forthcoming. The AAO summarily dismissed the petitioner's appeal, because at the time of adjudication the record contained no further submission. The appellate submission has now surfaced and AAO will consider the appeal on its merits.

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 pertinent regulations 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 identifies himself as a "producer/director/performer of circus acts." The petitioner has previously performed in the United States with the Ringling Bros., Barnum and Bailey Circus.

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's acrobatic group Jumping Jacks won a prize for their trampoline act "Basketball from the year 2000," at the 1995 International Circus Festival in Monte Carlo, Monaco. An undated certificate indicates that the petitioner won first prize in the Russian Circus' Third Contest of Circus Performers. The director of the First International Circus Festival of Budapest states that the petitioner "won the Golden Prize" at that 1996 event, a prize which merited mention in the noted Russian newspaper *Pravda*. The petitioner claims other prizes as well, but the prizes mentioned here appear to be sufficient to satisfy 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.*

Counsel cites the petitioner's membership in the Union of Circus Workers, and states "[o]nly artists who have attained extraordinary high levels of achievement can earn this mark of distinction," but the record contains no documentation from the organization to support this claim. Similarly, the record does not establish the level of achievement necessary to qualify as an Honored Performer of the Russian Federation.

> *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 most persuasive submission under this criterion is a 1996 article from *Pravda*, reporting the award that the petitioner's group received in Hungary, discussed above. The petitioner features in articles in such Russian publications as *Nighttime Moscow*, *Arena* and *Stage and Circus*, but the record does not establish that these publications are major trade publications or major media. An article from an unidentified German-language publication contains a single sentence referring to the petitioner's trampoline act. A Russian-language document lists award-winning Russian circus acts, including the petitioner's act. These brief mentions are not sufficient to warrant the conclusion that

the materials are "about the alien" as the regulation requires, and the petitioner has not identified the publications that carried the published materials.

Of the published articles submitted, only one appears to be at the required level, which does not establish a sustained pattern of acclaim.

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

Witnesses and newspaper articles have attested to the originality of the petitioner's trampoline-basketball act, but there is no objective evidence to show that this act has had a greater impact on the field of acrobatics than other original routines.

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

Counsel states that a contract, reproduced in the record, "establish[es] earnings of ***$5,000.00 weekly***" (emphasis in original). The contract, with the Ontario-based Garden Bros. Circus, specifies that "all fees are payable in 50% U.S. funds and 50% Canadian funds," indicating that the total weekly payment is somewhat less than $5,000 U.S. dollars, owing to the lesser value of the Canadian dollar. More importantly, it appears that this weekly payment is for the entire trampoline act, rather than for the petitioner alone. The contract identifies a total of nine performers, including the petitioner.

Beyond the above criteria, the petitioner has submitted letters from several witnesses including Tim Holst, vice president of Talent and Production at Ringling Bros. and Barnum and Bailey Circus, who asserts that the petitioner has "reached an outstanding level of achievement in his craft" and "qualifies himself on the highest level." [redacted] head producer of the Circus of Kharkov, states that the petitioner "is without a doubt the best Circus Artist I have ever met in my entire career." [redacted] who holds several titles including artistic director of the Russian National Council for the Production of Circus Acts and Shows, states that the petitioner's "entire professional career . . . indicates exceptional producing talent, astounding creativity, extraordinary personal performing abilities and a wide range of activities in the Circus."

On September 13, 2000, the director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. Because the strongest evidence dates from 1997 or earlier, the director advised the petitioner that "acclaim must be sustained," and observed "there is little evidence of the beneficiary receiving any acclaim for the past three years," i.e. 1997-2000.

The petitioner's response consists almost entirely of photocopies of previously submitted exhibits. The only new submission is a letter from [redacted] formerly a principal dancer of the Moscow State Ballet Theater and now a professor of Dance at MacMaster University in Canada. Pr[redacted] states that he has known the petitioner "for over 30 years now," since

the petitioner was a student who "showed great promise" at Moscow's State School of Circus and Performing Arts. Prof. Ratevosian states that the petitioner received "numerous awards" between 1991 and 1997, but does not indicate what acclaim the petitioner has earned since 1997.

The director denied the petition, stating that the petitioner's evidence is insufficient to establish eligibility. The director reiterated that "any national or international acclaim must be sustained," and found that the petitioner had not provided any persuasive evidence that the petitioner's acclaim prior to 1997 has been sustained.

In the appellate brief, counsel discusses the statutory and regulatory language, but never addresses the director's repeated assertion that the petitioner's acclaim must be sustained, i.e. it cannot suffice to show that the petitioner once enjoyed such acclaim at some time in the past.

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

Counsel asserts that the petitioner's performances with various touring companies constitute qualifying artistic displays. Every performing artist "displays" his or her work, either before live audiences or via recording or broadcast media. This criterion applies primarily to the performing arts. The regulations contain a separate criterion relating to commercial success in the performing arts, but counsel has never claimed that the petitioner satisfies that criterion.

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

Counsel attempts to address this criterion, as well as the earlier criterion relating to membership in associations. Counsel states:

> The Circle of Honored Performers of Russian Federation is very reputable and elite, it includes a few extremely talented and successful entertainers, and to be a member of this elite group is very prestigious and rare (Exhibit 16). [The petitioner] became a part of this group, by order of the President of [the] Russian Federation, Mr[redacted] on 20th of August 1993 (Exhibit 16). [The petitioner] occupies [a] critical role in this union due to his unique stature as a circus performer and a show director.
>
> Slightly different but also very prestigious structure is a group combining honored performers of Russia, the membership in which was presented to [the petitioner] on October 1993 by the President of the State Company "Russian Circus[redacted] (Exhibit 28). [The petitioner's] membership here is leading in a sense of his creative, artistic approach to the circus arts.
>
> [The petitioner] is a member of the Union of Circus Workers of Russia, which is a respected organization of circus entertainers, that requires years of experience and certain amount of famousness [sic] as part of their qualifying process (Exhibit 27). . . . The critical role of [the petitioner] is shown by the special signing of [the]

document confirming his membership by Mr. [redacted] who is an international wonder and a legend in the field of circus.

Counsel's assertions that the petitioner performs in a leading or critical role for the above organizations by virtue of "his unique stature," "his creative, artistic approach," or "the special signing of [the petitioner's membership] document" are not persuasive. Regarding the evidence to support the above claims, counsel refers to documents only by exhibit number. Locating these documents within the appeal submission is complicated by the fact that the exhibits themselves are not numbered, and there is no index to correlate the exhibit numbers with specific documents.

One certificate from Ms. [redacted] acknowledges the petitioner's receipt of a prize at the Monte Carlo competition discussed further above. Another certificate from Ms. [redacted] states that the petitioner "has the title of Honored Performer of the Russian Federation." Neither certificate mentions membership in any association, nor any leading or critical role therein.

Similarly, the only certificate to bear the name of [redacted] states that the petitioner has been "awarded the honorable title 'Honored Performer of the Russian Federation," but there is no indication of membership or leading or critical role. The certificate is a wallet-sized document, more akin to an identification card than an award certificate. It is impossible to tell from the photocopy whether President [redacted] personally signed the document, or rather his signature was reproduced on the document. The document bearing President [redacted] signature is clearly what counsel refers to as "Exhibit 16" because it is the only such document in the record, but this document does not confirm counsel's claim that "to be a member of this elite group is very prestigious and rare," a claim also purportedly supported by "Exhibit 16." The petitioner's membership card from the Union of Circus Workers of Russia is indeed signed by [redacted] but the record contains no documentation specifying the membership requirements.

The record indicates that the petitioner has had a long and successful career as an acrobat and as a producer of circus acts. The record also documents a burst of recognition in 1996 when the petitioner's group won an international prize. The most persuasive evidence, however, stops at 1997, two years before the petition was filed in December 1999. The director has repeatedly advised the petitioner that qualifying acclaim must be sustained, and the director has repeatedly observed a lack of qualifying evidence from later than 1997. Counsel has never addressed this key finding, instead focusing largely on the petitioner's accomplishments from 1996 and earlier, while drawing highly tenuous inferences supported by unidentified evidence.

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 a performer and producer of circus acts 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 set him significantly above almost all others in his field at a national or international level as of the filing date. 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the petition will be denied.

ORDER: The petition is denied.