B2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: WAC 02 106 51882 Office: CALIFORNIA SERVICE CENTER Date: FEB 05 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

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

Elizabeth Hazard

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, specifically the art of acrobatics. 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 of her field.

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.

Counsel asserts that the petitioner "holds the highest professional title in her field of endeavor," specifically the title of First Class Entertainer which the petitioner earned in 1988. The petitioner submits a copy of what appears to be a passport-sized document entitled "Certificate of Professional Title and Qualification," including a photograph of the petitioner and information such as "Profession Series," "Post Qualification" and "Sanction Date." The translation of the certificate lists the petitioner's "Professional Qualification" as "State First-Class Entertainer." There is no indication of the significance of the title. The certificate was issued by the Liaoning Personnel Bureau, rather than by any national-level body.

Certificates from China's Ministry of Literature and Art indicate that the petitioner received the Silver Prize at the 1st National Acrobatic Competition, August 1984, "the highest prize of France President Award" at the 9th Tomorrow World Acrobatic Competition, and the Excellent Performance Prize at the 5th National Art Joint Performance, August 1989.

Regarding the "France President Award," if the award was indeed presented by French authorities, then responsibility for verifying the award lies with officials in France rather than in China. Photographs show the petitioner and several other performers holding certificates labeled "*Festival Mondial du Cirque de Demain*," which translates as "World Festival of the Circus of Tomorrow." The record contains neither a translation nor a fully legible reproduction of the French certificates. The Chinese certificate is undated but a banner visible in one photograph indicates that the event took place in late January 1986.

Given that the Chinese Ministry of Literature and Art was clearly not the entity responsible for awarding the French award, it is not certain that the Ministry awarded the other prizes named on the certificates. The certificates, therefore, have not been shown to represent first-hand documentation of the prizes claimed.

The director instructed the petitioner to submit further evidence regarding the above awards. In response, counsel states that the petitioner's 1984 Silver Prize and 1989 Excellent Performance Prize were both issued by China's Ministry of Culture, "the highest government agency having administrative jurisdiction over the regulation and organization of culture and entertainment activities in China."

Hengfu Niu, an official of the Liaoning Province Cultural Department, provides a list of six criteria for "the title of National First-Class Actor/Actress." The letter does not specify whether an individual must meet all of the criteria, only one of them, or some intermediate number. One of the criteria involves "[h]aving published at least two papers . . . or presented three professional research reports of academic value." The record contains no evidence that the petitioner has presented any such papers, and the petitioner does not claim to have satisfied 8 C.F.R. 204.5(h)(3)(vi), pertaining to publication of scholarly articles. If the petitioner has not written such articles, then an individual need not satisfy all six criteria to earn the title. Some of the

criteria pertain simply to training and education; the first criterion requires an "above college-level academic degree" and 20 years of experience. There is no indication as to which of the criteria the petitioner fulfilled to earn the title (although the record indicates that the petitioner worked as an acrobat for over 20 years before receiving the title). Hengfu Niu's letter also indicates that applications for the title are approved at the provincial rather than national level, and the title is awarded by the Human Resources Department of Liaoning Province. This is consistent with the previously submitted certificate of the petitioner's title, which is marked as having been issued by the Liaoning Personnel Bureau.

Jianping Fei, president of Shenyang Acrobatic Troupe, of which the petitioner was a member for many years, offers background information about the national acrobatic competitions in which the petitioner had competed and won prizes. The record contains no confirmatory or explanatory documents from the awarding entity itself.

Regarding the French award claimed by the petitioner, counsel provides an address and telephone number for the awarding association but no actual evidence from the association, nor any copy or translation of the certificate that the petitioner is shown holding in photographs. Instead, the petitioner offers a personal affidavit, asserting that she was "the major actress and the major acrobatic choreographer" in a performance that won the Shenyang Acrobatic Troupe, as an ensemble, the President's medal in 1986. The petitioner states that, because of this achievement, China's Ministry of Culture awarded her 20,000 yuan, hundreds of times the average monthly wage of a bachelor's degree holder in China. The petitioner submits a printout from the web site www.veress.se, naming the prize winners of the 2001 *Festival Mondial du Cirque de Demain* but offering no information about the 1986 winners. That web site indicates that the "Circus of Tomorrow Category," including the winners of the "Prize of the President of the Republic," are in the age group of 19-25 years. For other age groups, the categories and prizes have different names. The petitioner was 34 years old in 1986.

The aforementioned web site, www.veress.se, provides a link to the official web site for the festival, www.circonautes.com, which has pages in French and English. This official site indicates that the 1986 gold medal went to the Shenyang Acrobatic Troupe, but identifies no individual recipients. The same site confirms that the maximum age for participation in the festival is 25 years. Given that the petitioner was at least nine years beyond the age limit for participation, she cannot have been one of the acrobats in the competition itself. She states that she was the troupe's "major acrobatic choreographer," but she also asserts that she was "the major actress" at the event. This discrepancy necessarily raises questions of credibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). In light of the foregoing, it is highly significant that the record contains nothing from the festival organizers themselves to clarify what role the petitioner played in the troupe's award-winning performance. Certificates from a Chinese government agency that had nothing to do with

presenting the award in France cannot adequately resolve these discrepancies, nor can testimony from officials in Liaoning Province.

> *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 states that the petitioner holds three qualifying memberships, in the China Acrobatic Artist Association ("CAAA"), the China Acrobatic Artist Association Liaoning Branch, and the Shenyang Entertainment Association. The second association named above appears, from its name, to be a provincial branch of the first association, rather than an entirely separate association (although the petitioner joined the Liaoning Branch before she joined the national-level association). The third association, again from its name, appears to be a local association in the Shenyang area rather than a national or international association.

Furthermore, the petitioner has submitted evidence of the membership requirements for only one of the above associations. A document identified as the draft articles of incorporation of the China Acrobatic Artist Association indicates that membership is open to "acrobatic professionals who . . . have made outstanding achievements in acrobatic field" upon recommendation by "provincial associations" and approval by the CAAA. The record does not contain the final articles, and therefore it is not clear whether the draft document conforms to the finalized version. The partial translation submitted by the petitioner does not indicate whether or not the articles offer a definition of "outstanding achievements."

The director requested documentation of "the minimum requirements and criteria used to apply for membership" as well as other information regarding the above associations. In response, the petitioner submits copies of previously submitted documents.

> *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.*

Short biographical profiles of the petitioner appear in *Who's Who of Young Chinese*, *Biographies of Chinese Authors and Artists*, *China Contemporary Artistic Celebrities Dictionary*, and *Achievement Dictionary of China Senior Professionals*, which are reference books containing hundreds, perhaps thousands, of short biographical profiles. The petitioner submits what appear to be partial translations of her profiles. Directory-type books such as these do not call special attention to the petitioner compared to the many other individuals listed in the books. The petitioner has not established the criteria for inclusion in the volumes.

The cover of the April 1984 issue of *Acrobatics and Magic* shows 18 acrobats arrayed on a single bicycle. The petitioner is one of the acrobats, but the cover does not include any caption or

inscription identifying the acrobats or singling out the petitioner. The petitioner submits a copy of the accompanying article, but not the required translation. Some of the photographs accompanying the article show the petitioner, but this does not demonstrate that she is the principal subject of the article.

The petitioner submits copies of short articles from *China Youth Newspaper*, March 30, 1986, and *Daqing Daily*, August 18, 1988. The articles are untranslated. Descriptions of the contents of the articles are not translations. The petitioner has also failed to submit evidence to show that any of the above publications are considered major media. In addition, the petitioner has not shown that she has been the subject of any media coverage at all after 1993, the latest date shown in the published materials.

The director requested "evidence to establish the significance of the published material . . . and how it has set the alien apart from others in the field" to establish sustained acclaim and extraordinary ability. In response, the petitioner cites the aforementioned letter from Jianping Fei, who discusses the books in question. This witness does not claim to represent the publishers of the books in question and therefore has no apparent standing to attest, first-hand, to the criteria for inclusion in the books.

[redacted] deputy chief editor of *Acrobat and Magic*, states that the magazine distributes 60,000 copies annually, both domestically and internationally. Lei Qiao, identified only as a former news reporter, states "China Youth Daily is . . . a national newspaper with young people all over China as its intended readers." It remains that the petitioner has not submitted adequate translations of the articles from these publications. The petitioner submits materials indicating that *Daqing Daily* is a local rather than national newspaper.

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

Every performing artist "displays" his or her work merely by performing on stage, film, or broadcast media. In this instance, however, the petitioner has demonstrated that during several international tours, the petitioner's troupe performed before numerous heads of state including then-President Richard Nixon, who received the acrobats at the White House in the early 1970s. Such performances clearly fall outside of routine stage appearances, and thus the director concluded that the petitioner has satisfied this criterion.

Beyond the above criteria, counsel states that then-President Richard Nixon "interviewed"[1] the petitioner at the White House when her troupe visited the United States in the early 1970s. The principal evidence in the record regarding the petitioner's contact with President Nixon consists of two photographs, showing the petitioner's acrobatic troupe walking in receiving lines and shaking the hands of the President and First Lady, as well as those of several unidentified Chinese dignitaries. The petitioner also submits a photograph of an object, decorated with the

[1] The petitioner, counsel, and various witnesses all consistently refer to these encounters as "interviews."

presidential seal, which the petitioner identifies as a souvenir from the President. Photographs of "interviews" with other heads of state are also from similar receiving lines.

The petitioner submits letters from witnesses whom counsel deems "experts in the area of acrobatics." [redacted] vice director of the China Comic Art Committee and of the China Liaoning Acrobatic Troupe, states that the petitioner performed for heads of state in China, the United States, and elsewhere, "won the 1st gold award – French President Award," and that the petitioner has trained students with "very high acrobatic skills" who, in turn, have put on "highly commended" performances in "island countries in the south Pacific.' [redacted] president of the Acrobatic Artist Association of Liaoning Province, offers similar assertions in another letter. The petitioner has not submitted any letters from witnesses outside of Liaoning Province, to demonstrate that her overall acclaim has spread outside of that province.

The director denied the petition, stating that the petitioner has not met the burden of proof regarding her memberships in associations or published materials about her. The director found that the petitioner had satisfied the criteria regarding awards and artistic showcases, although, when discussing the petitioner's awards, the director did not observe the discrepancies regarding the French award.

On appeal, counsel contends that the director "ignored and neglected the part of the documents that proved petitioner's international acclaim." Counsel asserts that the director erred in failing "to declare that [the petitioner] won a one-time major international award." Prior to the appeal, neither counsel nor the petitioner had ever claimed that any of the petitioner's awards was a major international award. The award in question, the French award from the *Festival Mondial du Cirque de Demain*, we have already discussed above. Given the documentation stating that the petitioner was outside of the eligible age range to participate in the festival, the petitioner has a heavy burden to show that she (not her pupils) won this award. The record contains no documentation from the festival organizers proving that the age requirement was not yet in place in 1986, or was waived specifically for the petitioner. The petitioner submits a letter from [redacted] president of Dragon Entertainment Company, who asserts that the French festival is one of the highest-level acrobatic competitions in the world but does not mention either the petitioner or the festival's age limitations (documented in the petitioner's own submission).

Regarding her membership in the CAAA, the petitioner submits a longer, but still incomplete, translation of that organization's draft articles of incorporation, this translation referring to "remarkable achievements" rather than "outstanding achievements," with no definition offered for the term. The petitioner has not shown whether a final version exists, and if so, what changes have been made from the draft articles submitted. The new translation indicates that all members of provincial associations are considered members of the national organization.

The petitioner submits what appears to be a full translation of a 1988 article from *Daqing Daily*, already identified as a local rather than national publication. The petitioner has submitted no such translations of articles from qualifying national or international publications, despite

repeated notices from the director which quote the regulatory requirement that foreign-language articles must include any necessary translation.

The record indicates that the petitioner has toured extensively with a highly regarded acrobatic troupe, and through her association with that troupe she has had considerable success as an acrobat. The evidence, however, seems to indicate that her long-term reputation is largely confined to Liaoning Province. The petitioner's role in the Shenyang Acrobatic Troupe's 1986 gold medal remains unclear, and assertions to the effect that she personally participated in the act are not consistent with corroborated documentation showing an age limit for which the petitioner could not qualify at that time.

Another issue that merits consideration is the extent to which the petitioner has sustained whatever acclaim she earned in the past. The record is largely silent regarding the petitioner's work after the late 1980s. This is relevant because the immigrant classification is not a reward for past accomplishments, but rather a means to benefit the United States by bringing in talented individuals who remain at the top of their respective fields.

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 an acrobat 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.