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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

[redacted]

File: WAC-01-202-57536 Office: California Service Center Date: JAN 3 1 2003

IN RE: Petitioner:
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:

[redacted]

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

for 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. 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 he 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 acrobat. 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). On appeal, counsel asserts that the petitioner's receipt of the "Golden Cup" at the International Circus Festival in Monte Carlo in 1976 and a prize at the Golden Circus International Circus Festival of Rome constitute a one-time achievement in 1999. As will be discussed more below, the record reveals that the top prize at the Monte Carlo festival is the Golden

Clown. The petitioner did not receive a Golden Clown or Silver Clown, but one of twelve "special prizes." The record does not establish that these special prizes are major, internationally recognized awards. Moreover, the petitioner received the special prize in 1976. As such, this award alone is not evidence of *sustained* acclaim. In addition, as will also be discussed in more detail below, the record contains little evidence of the significance of the Rome festival. Thus, the petitioner has not demonstrated that he received a major, internationally 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. Initially, neither the petitioner nor counsel explained which criteria the petitioner purportedly met. Despite a specific request to clarify the petitioner's claim, the petitioner failed to do so in response to the director's request for additional documentation. On appeal, counsel merely argues that the petitioner received a major, internationally recognized award and does not claim that the petitioner meets any of the alternative regulatory criteria. Nevertheless, we will discuss the evidence as it relates to 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, the petitioner submitted an undated certificate from the Bulgarian Federation of Sports Acrobatics granting the petitioner the title of Honored Master of Acrobatics; a certificate confirming the petitioner's receipt of first place in the regional acrobatics championship in Sofia in 1960; a certificate from the Committee of Culture awarding the petitioner a special honorary diploma at the Second National Circus Festival in 1964 for "high and genuine performances in his turn 'voltage acrobatics;'" a Laureate First Award from the 1965 First Festival of the European Circus; a certificate for the Dimitrov prize in 1969; a Laureate First Award from the Second National Festival of the Bulgarian Circus Proficiency in 1969; a 1980 Honorary Diploma from the town of Kemerov; and a 1986 honorary diploma from the town of Tbelisi. [redacted] Secretary General of the Bulgarian Federation of Sport Acrobatics, asserts that the Dimitrov prize is the highest Bulgarian distinction and the petitioner submitted some press coverage of the award, including an article picturing the winners.

[redacted] President of A&A Entertainment, asserted that the petitioner's troupe had won the Cup of Monaco at the Circus Festival in Monte Carlo in 1975 and first place at the Golden Circus International Circus Festival of Rome, hosted by Italian actress Liana Orfei in 1999. [redacted] Vice President of Star Attractions, the petitioner's agent, and the General Director of the Committee of Culture in Bulgaria reiterated this claim. The petitioner submitted a January 23, 1976 attestation from [redacted] the artistic director of the Monte Carlo Festival, affirming that the petitioner's troupe won the Gold Cup at the "Second Festival of Circus from Monte Carlo." The December 27, 1975 program for the Monte Carlo Festival, while not translated, appears to indicate that [redacted] won "Le Clown D'Or," three other groups won the "Clowns D'Argent," and that the petitioner's troupe won one of at least twelve "Prix Speciaux," specifically, the "Prix de L'Association Monegasque des Amis du Cirque." The photograph of the trophy allegedly

awarded to the petitioner's troupe[1] is labeled "Coupe De L'Association Monegasque Des Amis Du Cirque." The petitioner also submitted a list of [redacted] from 1985 to 1999 for the Rome festival. The petitioner's troupe is listed with another troupe for 1999.

In her request for additional documentation, the director requested evidence as to the significance and scope of each award. In response, the petitioner resubmitted previously submitted documents. The director concluded that the awards were mostly local and that the Dimitrov prize could not be considered since the petitioner won the award as a member of a group.

On appeal, the petitioner submits additional evidence regarding the International Circus Festival of Monte Carlo, the Golden Circus International Circus Festival of Rome, and the Dimitrov prize. Counsel chronicles the petitioner's awards and argues that the petitioner's awards were based on individual merit.

We agree that a team award can suffice for this criterion. For example, a tennis champion who wins a major doubles tournament is not precluded from meeting this criterion simply because he plays doubles tennis instead of competing on his own. As such, we will examine the evidence of prizes awarded to the petitioner.

The evidence regarding the Monte Carlo Festival is prepared by the festival itself and an official Monaco website. While the Monaco website indicates that the Clown D'Or Award is "considered a supreme honor by all the artists in this particular field," the petitioner did not win the Gold or Silver Clown. Rather, the petitioner won a special award not discussed in the materials submitted on appeal. As such, the significance of the award is unknown.

The petitioner submitted little new information regarding the Roman Golden Circus Festival. The posters for the festival from 1984 through 2001 are not evidence of the festival's significance. The record contains information regarding the jury of the festival in 2000, but little information on the number of circus acts that competed. The record does not support counsel's assertion that the festival is internationally televised. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted an Internet article abou[redacted] asserting that the Dimitrov prize was established as the highest award for achievements in science, technics, literature, and arts. While this article suggests that the award was intended to be distinguished, the record contains little information on how artists are nominated and selected for the award or how many other Bulgarians in the petitioner's field hold this honor.

The petitioner also submitted evidence of a previously unmentioned honor.[redacted] of the Ministry of Culture of Bulgaria asserts that the petitioner won the "most prestigious Bulgarian award in the field of art - medal[redacted] The petitioner submitted a photograph of the

[1] The trophy does not include the awardee's name.

medal, but there is no indication on the medal or the accompanying plaque that it was awarded to the petitioner. The petitioner also submitted the biography of explorer and anthropologist [redacted] who lists the medal among his honors and awards. That a noted explorer and anthropologist lists this award among his many honors is not evidence of the award's significance.

While the petitioner has submitted minimal evidence regarding the significance of his awards, even if we concluded that the petitioner met this criterion, it is only one criterion. As stated above, the regulations require that a petitioner meet at least three criteria. On appeal, counsel makes little attempt to argue that the petitioner meets any of the 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.

The director concluded that the petitioner had not submitted evidence relating to this criterion. We note that the record includes the petitioner's membership in the Bulgarian Union of the Artist. The petitioner did not, however, submit the membership requirements for this union. In general, union membership requires employment in one's field. Being able to work in one's field, regardless of how competitive that field may be, is not an outstanding achievement. As the petitioner has not established that the Bulgarian Union of the Artist requires outstanding achievements of its members, the petitioner cannot meet this criterion.

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.

While the director acknowledged under the "scholarly articles" criterion that the petitioner had submitted newspaper articles about his troupe, the director stated that the petitioner had failed to submit evidence relating to this criterion. As stated by the director, newspaper articles about the petitioner cannot be considered scholarly articles authored by the petitioner. The director, however, failed to explain why these articles could not serve to meet this criterion.

The petitioner submitted two Bulgarian newspaper articles regarding the petitioner's receipt of the Dimitrov prize, an Australian newspaper caption announcing the arrival of the petitioner's troupe, and a few other foreign news articles in unidentified papers. The plain language of 8 C.F.R. 204.5(h)(3)(iii) requires that a petitioner submit the title, date, and author of the material and any necessary translation. Without complete translations of the articles, we cannot determine whether the articles were primarily about the petitioner. Without evidence regarding the paper in which the articles appeared, we cannot conclude that any of the newspapers constitute major media. We note that local reviews of the petitioner's troupe are not evidence of national or international acclaim. Any successful circus will be reviewed by the local paper while performing in the area covered by that paper.

Finally, the petitioner submitted several circus programs. While the petitioner does not claim that these programs meet this criterion, we note that programs, while printed, are not published materials and do constitute major media. In light of the above, the petitioner does not meet this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director concluded that the petitioner had not submitted any evidence relating to this criterion. We note that the record includes a letter from [redacted] Secretary General of the Bulgarian Federation of Sports Acrobatics. [redacted] states that the petitioner was selected as a "state category judge." The petitioner submitted a certificate from the Bulgarian Federation of Sports Acrobatics confirming that the petitioner was one of the "initiators" of the National Officiating Committee in 1960.

In her request for additional documentation, the director requested evidence establishing the significance of the work judged and the criteria used to select the petitioner as a judge. The petitioner's response did not include such documentation. On appeal, the petitioner submits a new letter from [redacted] who asserts that the petitioner "has been chosen a referee many times in a number of republican and international competitions." This statement is too vague to establish that the petitioner was selected to judge acrobatic contests on a level indicative of national or international acclaim. The record still contains no information regarding the competitions judged or the selection process for the judges.

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

The director concluded that the petitioner had not submitted evidence relating to this criterion. We concur that the petitioner does not meet this criterion. Nevertheless, we find that the letters of support in the record warrant a discussion under this criterion. The petitioner submitted reference letters from a Swiss photographer, the Director of Entertainment at Circus Circus Hotel where the petitioner performs, fellow circus performers, and the petitioner's agent. These letters provide general praise of the petitioner's skills, but fail to identify any specific contribution to the field of circus performing.

[redacted] Executive Director of Bulgarian Circus and Lunapark, Ltd., asserts that the petitioner "created unique performances such as air belts and balance of cylinders" and that his achievements will "leave a deep mark in the history of Bulgarian circus art." The petitioner submitted an undated "diploma" awarded by the International Federation of Sports Acrobatics (IFSA) for "exceptional merits to the development [of] the Sports Acrobatics."

In her request for additional documentation, the director requested evidence to establish how the petitioner's work is original and how it has made a contribution of major significance to the field of acrobatics. In response, the petitioner submitted a letter from [redacted] Vice President of Magic

Star Entertainment and former acrobat. [redacted] asserts that the petitioner's troupe, which performs with the Russian bar, is "the only one in the world to use this kind of original prop," and that the petitioner "is the best teacher of this type of act." [redacted] does not explain what is unique about the bar used by the petitioner's troupe as compared with the bars used by other acrobatic groups featuring an acrobat who performs a routine on a flexible bar held by two other members of the troupe. [redacted] Director of the boys program at the National Academy of Artistic Gymnastics in Oregon, asserts that the petitioner's troupe is the only one to perform a triple somersault on a pole-vaulting pole. The record does not reflect that the petitioner is the one who performs the triple somersault.

On appeal, the petitioner submits a brief paragraph about the IFSA from Australia's official gymnastics website indicating that the IFSA was founded in 1973 and merged into the International Gymnastics Federation (FIG) in 1998, in the hope that sports acrobatics would eventually become an Olympic sport. The Internet materials do not discuss the diploma for exceptional merit awarded to the petitioner.[2] Without objective evidence of a specific contribution to the petitioner's field such that others in the field have been influenced by the petitioner or aspire to his accomplishments (such as a world record), we cannot conclude that the petitioner meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As stated above, the director noted that newspaper articles about the petitioner cannot meet this criterion as the petitioner did not author them. We concur, although, as noted above, these materials were likely submitted in support of another criterion. Regardless, the record is absent evidence of scholarly articles authored by the petitioner.

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

As stated by the director, the petitioner did not submit evidence relating to this criterion and, in fact, this criterion applies to visual artists, not performing artists like the petitioner.

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

The director concluded that the petitioner had not submitted any evidence relating to this criterion. The record does establish that the petitioner leads [redacted] as he is listed as such on the performance contracts. [redacted] has performed with Ringling Bros., at Las

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[2] According to an article posted on USA Gymnastics Online, Sports Acrobatics include pair, trio, and men's four events all involving landings on the floor or catches by a partner. It does not appear that these events permit the use of the pole-vaulting pole for landings. As such, the petitioner has not demonstrated how he has contributed to this sport. The petitioner has not submitted any evidence that he has won any prizes at the World Championships sponsored by the IFSA.

Vegas and other entertainment venues, at National Basketball Association (NBA) half-time performances, and in other circuses around the world. It is not clear that a small, six-member group can constitute an organization or establishment. The Metchkarov Troupe performs as part of a larger circus or show. While some of these shows may be distinguished, the petitioner cannot establish that he plays a leading or critical role for the show as a whole by being the leader of one of the acts.

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 submitted his performance contract with Circus Circus Hotel in Nevada reflecting that the petitioner's troupe would be compensated $3,200 weekly and 1997 contracts with The Greatest Circus on Earth for an Australian television special for which the troupe was paid US$20,000. Finally, the petitioner submitted foreign contracts, some without translations. In her request for additional documentation, the director requested evidence as to how the petitioner's salary compared with others in the field. In response, the petitioner submitted a new agent contract with Wolfpack Entertainment, checks from NBA teams for halftime performances, and a contract with Magic Star Entertainment for performances at L.E. Barnes Circus, Walt Disney World, and Sea World. The director concluded that the petitioner had not established that these contracts represented significantly high compensation in the field. The petitioner submits similar information on appeal. As the petitioner has not established what other high-level performers in the petitioner's field earn, his contracts cannot establish that he commands a high salary or other significantly high remuneration for his services.

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

The director concluded that the petitioner had not submitted evidence relating to this criterion. [redacted] Director of Entertainment at Circus Circus Hotel, asserts that the petitioner's troupe is "among the very best attractions we have presented." This statement, however, is not supported by box office receipts reflecting that the Circus Circus Hotel has enjoyed increased commercial success since contracting with the petitioner's troupe. As such, the petitioner has not established that he meets this criterion.

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 an acrobat 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 indicates that the petitioner shows talent as an acrobat, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.