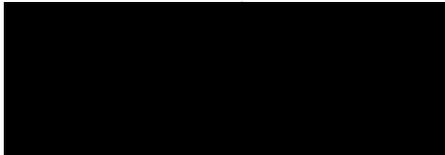


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**Identifying data deleted to  
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invasion of personal privacy**

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



File: WAC-02-274-50783

Office: California Service Center

Date: OCT 8 - 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:



**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 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.

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 Administrative Appeals Office 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 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 CIS 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). 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, 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 submitted evidence of the following awards:

1. Third Place in the "Friendship" International Competition Cup in Sofia, Bulgaria, in May 1975;
2. Second Place in the U.S.S.R. Championship in Riga, Latvia, in October 1975;
3. Second Place in the International Tournament of Friendship of Socialist Countries in Warsaw, Poland, in April 1977;
4. Third Place at the Volkov Cup International Competition in Moscow, Russia, in October 1978; and
5. Master of Sport ranking as of October 5, 1975.

Counsel also claims that the petitioner won awards in other local competitions. In support of these assertions, the petitioner submits an excerpt from a "Record Classification Book" maintained by the All-Union Volunteer Society to Support Army, Aviation and Navy (DOSAAF of the U.S.S.R.). The Committee of Physical Culture and Sports of the Administration of Volgograd Oblast and the Committee of Physical Culture, Sports and Tourism of the Administration of Volgograd City also provide certificates confirming the above awards. The petitioner did not, however, submit the award certificates for the competitions or confirmation from the official entities that sponsored the competitions.

As evidence of the significance of the awards, the petitioner submitted only a certificate confirming that the "Master of Sport" is the highest title in the Soviet Union and that it allows the recipient to "teach and coach on elementary, highschool [sic] and university levels."

In addition, the petitioner submitted a 1988 diploma issued by the Ministry of Culture of the U.S.S.R., All-Union Association of State Circuses, confirming "the title of Laureate and the 1<sup>st</sup> award for the creation of a unique circus masterpiece and the high level of performance." The petitioner also submitted a 2001 certificate from Ringling Bros. and Barnum and Bailey Circus recognizing the petitioner's act, the Angels of Fire, as "Best Act." Further, the petitioner submitted certificates of recognition issued by the State of Nevada and Nevada legislators.

Finally, counsel and a few of the petitioner's references assert that the petitioner won either the "Laureate and Special Jury Award" or the Silver Clown at the International Circus Festival in Monte Carlo in 1996. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Initially, the petitioner submitted a program listing the petitioner as a member of The Efimovs that performed in 1996, but did not include any

award issued to that troupe in the same year. In response to the director's request for additional documentation, the petitioner submitted a photograph of a Silver Clown and medal. The inscription on the statue is illegible in the photograph.

In his request for additional documentation, the director requested evidence of the significance of the above awards. In response, the petitioner submitted evidence indicating that the Master of Sports ranking requires winning one of various combinations of awards. The Committee on Physical Culture and Sports confirms that the petitioner won a Soviet Championship in 1975 that qualified him for the Master of Sports ranking. The petitioner also submitted a certificate confirming the above awards from the Volgograd Oblast Sports Committee as well as the awards for the Soviet Championship in 1975, the International V. Volkov Cup in 1978, and some local awards.

The director concluded that the petitioner had met this criterion. We do not concur. Many of the awards are local and the most significant award claimed is poorly documented. The national and international gymnastic awards documented were awarded decades before the instant petition was filed. The petitioner's alleged rank as a Master of Sports is more of a cumulative ranking than an award. As stated above, the Silver Clown is evidenced only by a program listing the petitioner as a competitor and a photograph of a statue and medal with no legible inscription.<sup>1</sup> Thus, the petitioner has not established that his troupe won this award. While we acknowledge the prestige of Ringling Brothers and Barnum and Bailey Circus, the record contains no evidence that their "Best Act" award is a nationally recognized award that the top performers, regardless of their employer, aspire to win. The record also contains no evidence regarding the significance of recognition from the petitioner's local officials and legislators. Such recognition does not appear to be a nationally recognized competitive award for which the most acclaimed performers compete regardless of where they perform in the United States.

In light of the above, we do not agree with the director that the awards documented in the record are indicative of or consistent with sustained national acclaim as a trapeze artist up until the date of filing.

*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.*

In support of this criterion, counsel references the petitioner's "Master of Sports" ranking and his employment with Russian and U.S. circuses. The director concluded that the petitioner's title was an award, not a membership, and that the petitioner had not established that "membership" in the various circuses with which the petitioner performed was limited only to those with outstanding achievements in the field.

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<sup>1</sup> The website on which the petitioner relies for other claims, <http://www.circusland.com>, reports that in 1996, an act under the direction of V. Vorobyov won the Silver Clown. The program for this festival submitted by the petitioner indicates that the petitioner's act was directed by Albert Effimov.

On appeal, counsel does not specifically address the director's conclusion regarding this criterion. We disagree that the petitioner's Master of Sports title is an award. It is a ranking in the field based on accomplishments in the field. We will consider below whether it can constitute evidence to meet this criterion.

Initially, the petitioner supported his ranking claim with an excerpt from a "Record Classification Book" maintained by the All-Union Volunteer Society to Support Army, Aviation and Navy (DOSAAF of the U.S.S.R.). The record contains no evidence as to why this society would have first hand knowledge of the petitioner's ranking. It does not appear to be the entity that awards the ranking. In addition, the All Russian Research Institute on Physical Culture and Sport confirms that the title is the highest title in the Soviet Union and that it allows the recipient to "teach and coach on elementary, highschool [sic] and university levels."

In response to the director's request for additional documentation, the petitioner submitted a certificate from the Administration of Volgograd Oblast, Committee on Physical Culture and Sports, asserting that the petitioner's second place finish at the 1975 Soviet Championship "fulfills the requirements for the title Master of Sports of the U.S.S.R, which is in compliance with the United All-Russian Sports Classification." In addition, the All Russian Research Institute on Physical Culture and Sport confirms the following requirements for the "Master of Sport of Russia of International Caliber" and the "Master of Sports of Russia." The International title requires several awards while the Russian title requires only certain scores in competition. At best, the record reflects that the petitioner was accorded the title of Master of Sport of the U.S.S.R. The certificate from the Administration of Volgograd reflects that even before the Soviet Union collapsed, there was both a U.S.S.R. and an International Master of Sports title. The record does not confirm the assertion that the requirements for Master of Sports of the U.S.S.R. were significantly more exclusive than the current requirements for Master of Sports of Russia. Certification to teach or coach based on potentially non-winning scores in competition is not membership in an organization that requires outstanding achievements of its general membership.

Finally, we concur with the director that the petitioner's employment with various prestigious circuses does not serve to meet this criterion. Employment, even for a prestigious performance company, is employment. It is not "membership" in an association. Thus, it does not meet the plain language of the regulatory 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.*

In support of this criterion, the petitioner submitted a videotape described by counsel as a "documentary film on the circus which featured Angels of Fire and Cloud Jumpers which was premiered by the A&E Network in 2002." In the response to the director's request for additional documentation, counsel asserts that the documentary was actually produced by New York Times Television for broadcast on the National Geographic Channel. [REDACTED] producer for the series, asserts that the petitioner was selected to demonstrate the art of trapeze catching based on his reputation as one of the world's best catchers.

In addition, the petitioner submitted press releases posted at <http://www.ringling.com>, the website of the petitioner's employer. The press releases consist of 1) a review of the entire circus performance that does not focus on the petitioner or even his troupe, and 2) biographies of Angels of Fire and Cloud Jumpers that do not appear to constitute independent journalistic reportage and do not mention the petitioner by name.

Finally, the petitioner submitted the following newspaper articles and interviews. The petitioner submitted an article entitled "The Circus: Ringling Brothers follow their path Through the Latin Community," published in *Enlace*. While the petitioner did not include a complete translation of the article, it includes a photograph of the Angels of Fire. The petitioner did not submit any documentation regarding the circulation of *Enlace*. The petitioner also included a copy of the Moscow Circus' advertisement in a special 1991 issue of the Russian publication *Arena*. While the advertisement features the petitioner as one of the performers, it does not single him out. The petitioner also submitted an interview with [REDACTED] published in the same issue of the *Arena* regarding the acrobats performing in the Moscow Circus. While Mr. [REDACTED] lists the petitioner as one of the acrobats in the act, the interview does not focus on the petitioner. The record also contains an interview with [REDACTED] supervisor of the troupe Fakel, in *Volgograd Pravda*, and several reviews of Fakel in the Russian newspapers *Evening Perm*, *Vecherny Tchelyabinsk*, and two unidentified publications. The interview and reviews only mention the petitioner as a member of Fakel and do not focus on him individually. The petitioner did not submit evidence of the circulation of these publications.

In response to the director's request for additional documentation, the petitioner also submitted evidence of a post-filing documentary on the Travel Channel on Ringling Brothers and Barnum and Bailey Circus and a review of the Circus in the *San Diego Union Tribune*.

The director concluded that the petitioner had not established the significance of the printed material, that the National Geographic documentary was not primarily about the petitioner, and that the Travel Channel documentary was aired after the date of filing and could not establish the petitioner's eligibility as of that date. On appeal, counsel argues that the regulations do not impose a requirement that the coverage be critical of the alien or that the petitioner demonstrate the "significance" of the media coverage. Counsel further argues that the letter from Ms. [REDACTED] conclusively establishes the "significance" of the *Science Times* documentary.

Counsel is not persuasive. While the regulation includes the phrase "relating to the alien's work in the field," the primary requirement is that the published materials be "about the alien." Articles focusing on the circus as a whole or on another performer with whom the petitioner performs are not "about the alien." None of the materials submitted are primarily "about" the petitioner. Moreover, while the pertinent regulation does not require evidence of the "significance" of the coverage, it does require that the coverage appear in "major" media. Thus, it is the petitioner's burden to demonstrate that the articles appeared in major newspapers with a national circulation. Moreover, we cannot conclude that press releases and advertisements, which are not the result of independent journalistic reportage, can

serve to meet this criterion. Such "published material" is simply not indicative of national or international acclaim.

Counsel makes much of the documentary that allegedly appeared on the National Geographic Channel. While we accord Ms. [REDACTED] letter due respect, what is relevant is the content of the documentary itself. A review of the video tape submitted as evidence of the televised documentary reveals that it contains a brief portion of a *Science Times* documentary on the physics of acrobatics sandwiched between what appears to be somewhat amateur promotional materials for the petitioner himself. The televised documentary portion of the tape includes narration and the *Science Times* logo. Prior to this portion of the tape, a different narrator promotes the Angels of Fire and Cloud Jumpers. The petitioner's name is superimposed over the footage which does not include the *Science Times* logo. After the portion of the televised documentary appears a montage of the petitioner's performances with superimposed "facts" about him in the same typeface as those that appear at the beginning. The montage is not narrated and does not contain the *Science Times* logo. The narration during the televised portion does not mention the petitioner by name. As the documentary footage is altered, it has little evidentiary value. Regardless, the portion of the televised documentary that bears the *Science Times* logo is about the physics of acrobatics and not about the petitioner. Regardless of why the producer chose the Angels of Fire to demonstrate the physics of acrobatics, it is not indicative of the petitioner's personal national or international acclaim. Anyone who did not know the petitioner would gain no knowledge of him from this brief televised appearance.

*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.*

As evidence to meet this criterion, counsel references letters from [REDACTED] Creative Director of Irvin Feld and Kenneth Feld Productions, Inc. and [REDACTED] Ms. [REDACTED] asserts that in addition to his accomplishments as a performer, the petitioner "is also an esteemed acrobatic coach who is able to help the members of the troupe learn and perfect the motions essential to an internationally recognized act." Mr. [REDACTED] states:

In addition to being a famous performer, [the petitioner] contributed to our act by training his colleagues. He trained almost 50 circus artists who are currently performing all over the world. One of them[,] Inna Pecheneva[,] is now performing at the Ringling Bros. and Barnum & Bailey Circus in the 'Bold and the Beautiful' Act directed by a famous circus producer[,] [REDACTED]

The director concluded that coaching does not constitute judging the work of others. Counsel does not specifically contest this conclusion and we concur with the director that the evidence does not establish 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.*

Counsel asserts that the petitioner meets this criterion as he was “an integral part of the world record breaking trapeze flight that sent Sergei Tur 43 feet through the air.” Counsel concludes: “As a member of *The Tur*, [the petitioner’s] catching ability made the feat possible.” In support of these assertions, counsel references a letter from Mr. [REDACTED] Mr. [REDACTED] states:

[The petitioner] was [an] integral part of my flying act, which includes the longest flight in the trapeze act. I established a Guinness Book record flying 43 feet to the hands of a catcher. There are flyers and catchers in a flying act, both equally important. Without [the petitioner] this flight could not be achieved.

Mr. [REDACTED] does not state that the petitioner was the catcher when the record was officially set. In addition, while signed by Mr. [REDACTED] the letter does not appear to have been prepared by him since it includes a question regarding whether his act is still performing in Reno, Nevada. While the petitioner submits downloaded information from <http://circusland.com><sup>2</sup> indicating that Mr. [REDACTED] established a world record of 43 feet in 1999<sup>3</sup> while performing with Fakel (The Torch), the petitioner submits no evidence that the Guinness Book of World Records or any other official source found his own alleged achievement notable.<sup>4</sup>

In his request for additional documentation, the director requested evidence as to how the petitioner’s work was “original” and of “major significance.” In response, counsel reiterates the claim that the petitioner “was selected as the catcher for the world record setting flight of Sergei Tur” and refers to witness letters crediting the petitioner with contributing to unique feats.

The director concluded that the petitioner’s participation in amazing and dangerous feats was insufficient to meet this criterion. The director concluded that the record lacked evidence that the petitioner’s work had “led to changes in the field.” On appeal, counsel argues that when an athlete performs an original feat, it becomes the benchmark for others.

We find that the record is inconclusive regarding whether the petitioner was the catcher for Mr. Tur when he officially set the record.<sup>5</sup> Moreover, the record contains no evidence that those who compile official records credit the petitioner with the record. While it is obvious that a trapeze flyer cannot perform without a catcher and that the catcher’s timing and strength are vital to the success of the

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<sup>2</sup> A visit to this site reveals that it is run by the Flying Cranes.

<sup>3</sup> Guinness’ own website, <http://www.guinnessworldrecords.com>, reports that Mr. [REDACTED] set a record of 62.3 feet on July 29, 1998 in California while performing with the troupe “The Tur.” According to the petitioner’s resume, he was touring Japan in 1998 and did not join The Tur until November 1998.

<sup>4</sup> Guinness’ own website, <http://www.guinnessworldrecords.com>, reports Mr. [REDACTED] record, but makes no mention of the identity of the catcher. The omission of this information suggests that Guinness does not view the record as a joint or team achievement.

<sup>5</sup> As stated above, *see supra* note 1, Guinness’ own website suggests that Mr. [REDACTED] performed the record setting leap with The Tur several months before the petitioner joined this troupe.

performance, these facts do not lead to the conclusion that a catcher must be credited with the record setting feat of the flyer he catches.

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

As evidence to meet this criterion, counsel refers to the many programs evidencing the petitioner's performances in various circuses around the world. The director concluded that the record lacked evidence that the circuses were exhibits of only the petitioner's skills. On appeal, counsel notes that acrobats do not perform individually.

We concur with counsel that the director's reasoning is flawed but cannot conclude that the petitioner meets this criterion. A visual artist who displays his work at a prestigious, nationally recognized exhibition featuring more than one artist can meet this criterion even though the exhibition is not primarily focusing on one artist. This criterion, however, clearly relates to visual artists, not performing artists. A separate criterion, discussed below, relates to performance artists and requires that the performer play a leading or critical role for the organization with which he performs. A circus is not an artistic exhibition or showcase, but a performance. Nor is performing in a circus comparable evidence to meet this criterion. It is inherent to the field of acrobatics to perform before an audience. We cannot conclude that every performer appearing in a nationally known circus is himself nationally or internationally acclaimed.

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

Initially, counsel asserted that the petitioner played a leading or critical role for Ringling Brothers and Barnum and Bailey Circus, the Angles of Fire, the Cloud Jumpers, the Nikulin Moscow Circus, and the Russian Circus (Rosgostsirk, formerly known as Souzgostsirk).

██████████ President of Imagination Entertainment, expresses his interest in hiring the petitioner, stating that the petitioner is the "lead catcher for 'The Angels of Fire[,]' which means he supports the flyers and these are very rare performers." Other references assert that the petitioner is "integral" to the 13-member troupe. ██████████ asserts that the petitioner was a "featured acrobat" of Souzgostsirk.

In his request for additional documentation, the director requested evidence demonstrating that the petitioner's role was "leading" or "critical" as opposed to an "important supporting role." In response, the petitioner submitted additional letters. ██████████ Official Historian of the Circus Fans of American and author of "A Reckless Era of Aerial Performance, the Evolution of the Trapeze," asserts:

Teamwork is absolutely necessary to perform an act of this quality, and as the catcher for the act, [the petitioner] is an indispensable part of the equation.

. . . . In my opinion, the Angels of Fire act is one of the most innovative and sensational aerial performances in the world today.

Every member of the troupe is essential to its execution and the continued high standards of quality that it has established. As the catcher for the Angels of Fire, [the petitioner] is a highly specialized part of the team. The flyers with any act usually outnumber the catchers by at least two to one, and a catcher of [the petitioner's] caliber has to be adaptable enough to work with all of them. The catcher is unique and indispensable for his strength and reflexes, his sense of timing, and the rapport that he is able to develop with the fliers.

The director concluded that the petitioner had not established that, as a single member of a 13-member acrobatic team performing as one of the numerous acts in Ringling Brothers and Barnum and Bailey Circus, he played a leading or critical role for that circus. On appeal, counsel argues that the Best Act award for the Angels of Fire establishes that the members of that troupe play a leading or critical role for the circus. In addition, counsel argues that the petitioner failed to consider that the petitioner plays a leading or critical role for the Angels of Fire, itself an organization with a distinguished reputation. Counsel references Mr. [REDACTED] assertion that the petitioner was picked for his talents and several witness letters attesting to the critical nature of the petitioner's role within the troupe.

Counsel is not persuasive. While other criteria may permit team accomplishments, such as the awards criterion, we cannot conclude that the phrasing of this criterion permits a similar interpretation. In order to meet this criterion, the petitioner must distinguish himself from the other members of the organization for which he claims to play a leading or critical role. Otherwise, the phrase "leading or critical role" is meaningless. The evidence reveals that the petitioner's troupe is an ensemble and that each member is equally critical to the performance. The troupe's contract with the circus does not single out the petitioner for additional compensation. There is no other indication that he is more notable than the other Angels.

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

In response to the director's request for additional documentation, counsel noted that the petitioner originally performed in the Soviet Union, where communism precluded "commercial success." In addition, counsel noted that Ringling Brothers and Barnum and Bailey Circus will not divulge box office receipts. Counsel requested that the director consider ticket prices, the number of seats available, and the number of shows performed annually as evidence to meet this criterion. The director concluded that the petitioner had not submitted evidence that he was responsible for any success the circus may have enjoyed. Counsel does not challenge this conclusion on appeal and we concur with the director.

*Comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).*

Counsel initially argued that since not all of the ten criteria apply to the petitioner's field, the director should consider the reference letters submitted as "comparable evidence" pursuant to 8 C.F.R. § 204.5(h)(4). On appeal, counsel criticizes the director for failing to give sufficient weight to these letters.

While 8 C.F.R. § 204.5(h)(4) allows for comparable evidence, a petitioner must demonstrate that the regulatory criteria are not applicable to the alien's field. Where an alien is simply unable to meet three of the regulatory criteria, the use of comparable evidence is inappropriate. In the instant case, counsel claims that the petitioner meets seven of the regulatory criteria. Thus, counsel concedes that more than three of the regulatory criteria are applicable to the petitioner's field. We concur with counsel regarding the applicability of those criteria with the exception of 8 C.F.R. § 204.5(h)(3)(vii). Thus, the use of comparable evidence does not appear appropriate in the instant petition. Regardless, the subjective opinions of witnesses selected by the petitioner are not comparable with the regulatory list of objective evidence that can demonstrate eligibility. Insofar as the reference letters address the regulatory criteria, they have been discussed and considered above.

*Federal Case distinguished*

On appeal, counsel cites *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995), for the proposition that in evaluating athletes who compete on a team, "the caliber and recognition of that team or troupe greatly defines the abilities of the individuals performing for that team or troupe." Relying on *Muni*, counsel asserts that the director erred by denying the petition despite concluding that the evidence established the prestige of the petitioner's "act."

We find that the instant petition is easily distinguished from the facts in *Muni*. Nor do we find that the language in the decision mandates the approval of the instant petition. The court in *Muni* accepted as permissible the interpretation that membership on a major league team does not by itself qualify an athlete as one having extraordinary ability. Thus, the petitioner's membership in a nationally touring acrobatic troupe is similarly insufficient by itself.

The court did dispute the conclusion that as a starting member of a Stanley Cup winning team, Mr. [REDACTED] must demonstrate his role in the victory. Thus, the court effectively held that team awards are acceptable to meet the awards criterion. Neither the director nor our present decision holds otherwise. The director concluded that the petitioner met the awards criterion. We disagree not because the Silver Clown was a team award, but because the record contains little evidence that the petitioner or a team with which he performed was the recipient of this award.

Notably, the remainder of the court's decision focuses on the petitioner's personal ability to meet various criteria. For example, the court discussed the petitioner's personal salary and the articles about the petitioner in major media. Nothing in the court's decision implies that articles primarily about Mr. [REDACTED] team or a particular game in which he played would have sufficed.

It remains, Mr. [REDACTED] had been recognized individually as “Best Hitting Defenseman” and “Most underrated Defenseman” by an official National Hockey League (NHL) Magazine and the largest hockey magazine. He demonstrated media coverage specific to him and a high salary as compared with other, major league NHL players. The instant petition contains no media coverage of the petitioner as an individual performer or other such evidence distinguishing the petitioner from other touring, performing acrobats. Thus, we do not find that the director’s decision was contrary to the court’s holding in *Muni*.

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.