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U.S. Citizenship
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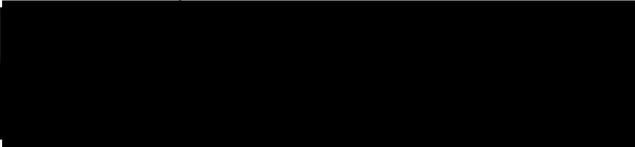
FILE: WAC 03 007 54287 Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2005**

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 of the Administrative Appeals Office 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.

Mari Johnson

R 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 (AAO) 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. 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 field of expertise are set forth in the 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 earned sustained national or international acclaim at the very top level.

This petition, filed on October 9, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a pantomime artist, theatrical actor, and vocalist. The statute and regulations require the petitioner's acclaim to be *sustained*. The record reflects that the petitioner has been residing in the United States since January 2000. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is certainly reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a performing artist in this country.

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 pertaining 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.

In 1999, the petitioner was bestowed the title of "Honored Artist of the Russian Federation." The petitioner's honorary title is confirmed in a special edition of the Russian newspaper *Pravda* and in a brief artist profile (less than a quarter-page) beginning on page 119 of the *Russian Drama Theater Encyclopedia*. On appeal, the petitioner submits a web page posted by the Russian Government entitled "State Decorations of the Russian Federation." Under the heading "About the Honorary Title 'Honored Artist of the Russian Federation,'" the web page's English language translation states:

Honorary title "Honored Artist of the Russian Federation" is awarded once a year to highly professional performers, directors, singers, conductors, and musicians who have created magnificent artistic images, characters, shows, films, concerts, variety shows, who have contributed immensely to their Native Culture and Art and received national acclaim for their work. Honorary title "Honored Artist of Russian Federation" represents the highest national award of Russian [sic]."

The record contains no information regarding the exact number of dramatists who were conferred this title in 1999. While the listing in *Pravda* indicates that numerous other Russian performers were bestowed this same honor, we find that the overall strength of the above evidence outweighs this weakness and, on balance, the honorary title is adequate to minimally satisfy this criterion.

The petitioner also submitted evidence showing that he received a "Golden Mask" award in 1998. According to a letter from [REDACTED] President of the Golden Mask Association, the Golden Mask is a national theater award presented "by the Government of the Russian Federation and by the Theatre Union of the Russian Federation." [REDACTED] further states that the "Golden Mask Theater Award represents the best production of the season including best director, best choreographer, best composer, best set design, and best actor." The petitioner's Golden Mask award certificate, however, does not state that the petitioner won under any of the preceding categories, nor does it identify a specific theatrical production. Rather, the petitioner's award was presented "in recognition of his distinguished contribution into the development of Russian Art." Information provided by the petitioner from the Golden Mask's website confirms that the "main" nomination categories for Golden Mask awards consist of "acting, directing, conducting, choreography and set design." The petitioner, however, appears to have won a "Support of Russian Theatre" award. According to the Golden Mask website, the "Support of Russian Theatre" award is "announced before the festival begins." The record contains no evidence showing that the petitioner's Golden Mask award certificate commands the same level of recognition as do Golden Mask awards for best director, best choreographer, best composer, best set design, and best actor. Nor is there any evidence showing the names and number of individuals who won a Golden Mask for their "distinguished contribution into the development of Russian Art" in the same manner as the petitioner. Based on the documentation discussed above, we acknowledge the national scope of the Golden Mask Festival, but the level of recognition and prestige associated with the petitioner's individual award certificate has not been adequately demonstrated.

On appeal, counsel argues that the Golden Mask “is considered the Russian equivalent of the Academy awards,” yet the petitioner’s entry on page 119 of the *Russian Drama Theater Encyclopedia* does not even cite his receipt of this award. Given the prestige that counsel claims is associated with the petitioner’s Golden Mask award certificate from 1998, we find it interesting that the brief entry about the petitioner appearing in the *Russian Drama Theater Encyclopedia*, while it mentions the petitioner’s “Honored Artist of the Russian Federation” title from 1999, does not mention his receipt of a Golden Mask award from one year earlier. Nor is there any evidence of media reports or publicity surrounding the petitioner’s receipt of a Golden Mask award or his attendance at the awards festival. While the level of recognition of the petitioner’s “Honored Artist of the Russian Federation” title (1999) is adequately supported by independent evidence, we find no such support in the record for the petitioner’s Golden Mask award (1998).

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 order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner submitted evidence of his membership in the Theater Actors Union of the Russian Federation. The record, however, contains no evidence of this organization’s bylaws or membership requirements to demonstrate that it requires outstanding achievement as an essential condition for admission to membership, or that its applicants are evaluated by national or international experts in consideration of their membership.

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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*,

nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

In regard to the few sentences about the petitioner on page 119 of the *Russian Drama Theater Encyclopedia*, we cannot conclude that the petitioner's limited entry into such a sizable tome (well over one hundred pages) would constitute qualifying published material about the petitioner and his work. It is noted that the size of the biographical sketches for a large number of artists featured in this publication far exceeds the petitioner's few sentences.

The published materials presented by the petitioner consist mostly of local newspaper articles discussing or promoting upcoming theatrical productions or Red Elvises' band performances in which the petitioner appeared. Considering it is hardly unusual for local newspapers to print reviews of local performances, reviews of this kind are not adequate to establish sustained national media attention. Even then, many of the reviews mention the petitioner only briefly. These brief pieces do not reflect national media coverage, but, rather local publicity, which is certainly not uncommon for a performing artist. The petitioner provided evidence of pieces appearing in the local entertainment sections of newspapers such as *The Los Angeles Times*, *San Jose Mercury Register*, and *The San Francisco Chronicle*. The petitioner has not shown, however, that advance theatrical reviews or promos of this type are unusual for actors appearing in a local theatrical production or a stage-band performance. Without evidence showing that his performances have received significant media attention from outside of California or the other regions where he has resided, we cannot conclude that the petitioner has sustained national acclaim as an actor or musical performer. Furthermore, many of the articles presented by the petitioner only briefly mention him in the context of a piece about an overall theatrical production or a discussion about the Red Elvises' formation as a rock group. Involvement in an event, such as theatrical production, that, as a whole, merits some local media coverage is not adequate to demonstrate an individual performer's sustained national or international acclaim.

A June 22, 2000 piece in the *Minneapolis Star Tribune* indicated that the Red Elvises were to appear that day at 9:00 p.m. at the "400 Bar" in Minneapolis. The article concludes by stating: "Elvis used Hollywood to further his career. The Red Elvises hope to use all that's available in the entertainment capital to boost their career. They're doing the music for a TV cartoon series for the fall, and [the petitioner] would love to write movie soundtracks."

An undated review by William Manus in an unknown publication primarily discusses an individual named Richmond Shepard. The review, entitled "RICHMOND SHEPARD STARS IN A MIME'S LIFE," mentions the petitioner as follows: "Written and directed by Shepard, the revue not only showcases Shepard's solo skills but features five other young mimes who are able to hold their own with him." The petitioner's name then appears in parentheses along with the "other young mimes."

An additional review of "A Mime's Life" appearing in the "Calendar Weekend" section of the *Los Angeles Times* on January 24, 2002 devotes only two sentences to the petitioner. The petitioner provides some

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

additional articles from the "Calendar Weekend" section of the *Los Angeles Times* that promote his upcoming performances on local stages in Los Angeles. Such articles are not tantamount to national media exposure.

A 1991 article appearing in *Backstage West*, a trade newspaper for Los Angeles performing artists, discusses a Los Angeles performance of the Arlekin Theater Troupe from Moscow, the group with which the petitioner was touring at that time.

The petitioner also submitted a few articles published in Russian, but he did not include their date of publication or the name of the publication in which the articles appeared. The regulations, however, require the title and date of the publications to be submitted as evidence. The national distribution of the Russian language articles has not been established.

We find that the evidence presented by the petitioner is not adequate to show that he has been the primary subject of sustained national media attention in the United States or Russia.

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

The petitioner submitted several witness letters, mostly from individuals who have collaborated on various productions with the petitioner at one time or another. The witness letters provided describe the petitioner as a highly talented performer, but they provide no information regarding how the petitioner's individual contributions have significantly influenced the theatrical field or the music industry. For example, the petitioner's performances have not been shown to have greatly influenced other successful American or Russian actors or musicians. The issue here is not the skill level, professional experience, or dedication of the petitioner, but, rather, whether any of his past endeavors would qualify as a contribution of major significance in the performing arts. In this case, there is no evidence showing the extent of the petitioner's influence on other professionals in the entertainment industry.

██████████, President, SRO Productions, Inc., states:

It is a pleasure for me to write this letter of reference for [the petitioner] who has engaged in several contracts for us. [The petitioner] is the type of performer that is a "hit" wherever we take him. Some of our events are extremely crowded and [the beneficiary] is able to not only perform under any circumstances but is intelligent in his "performance area" choices. He serves as not only an excellent entertainer but as crowd control.

██████████, Assistant Director, Dick Foster Productions, states that the petitioner has worked with his company in the past. He further states: "A well-versed mime [the petitioner] possesses immaculate technique. His attractive appearance and professionalism helps him create unforgettable images on stage. He is now recognized as one of the best mimes in the field with an outstanding reputation worldwide."

██████████, Choreographer, Ballet Master, and Ballet Teacher at the Bolshoi Theater in Moscow, and a former instructor of the petitioner, concludes his letter by stating: "This artist may become the next discovery

for international art, the next musical and maybe Hollywood sensation. Without a doubt, he possesses all the necessary qualities to become an internationally renowned star-artist.”

██████████ of Victor Kruglov Talent asserts: “It is only a matter of time until [the petitioner] makes it “big” in Hollywood. . . . Such a talent cannot go unnoticed for long in the United States.”

██████████ and ██████████ statements indicate that the petitioner has not yet reached the very top of the performing arts field. Assertions that the petitioner has a promising future do not establish eligibility under this classification, for the regulations clearly call for evidence that the petitioner already enjoys major success and national or international acclaim.

██████████, Artistic Director, Cirque du Soleil Las Vegas Division, states:

This letter is to confirm that, befitting his stature in the industry and in recognition of his outstanding achievements, we would certainly consider inviting [the petitioner] to join our company in the future.

It is our considered opinion that [the petitioner] is among the top ten classical mimes in the world today The exquisite art of Classical Pantomime has unfortunately been dying off. Individual artists who keep this art alive are a few. [The petitioner] is one of these professionals along with such names as Etien Decraux, Jeann Louis Barro, Marcel Marceau, and others.

The record, however, contains no evidence of an offer of employment from Cirque du Soleil to the petitioner, nor does ██████████ address the extent to which the petitioner has influenced other performers. For example, B.B. Akimov, now an Artistic Director of the Bolshoi Theater, formerly toured with the petitioner as a fellow member of the Bolshoi Theater troupe. B.B. Akimov states: “[The petitioner] working in Marcel Marceau style, conquer [sic] Russian as well as Austrian public with his masterful movement . . .” While the record shows that the petitioner’s mime imitates Marcel Marceau’s style, there is no indication that the petitioner’s own original artistry is often imitated by other performers in the same manner. Without evidence showing that the petitioner has significantly influenced the work of other professional performers, we cannot conclude that his work represents a contribution of major significance in his field.

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

The AAO has consistently found that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Virtually every actor “displays” his work in the sense of performing in front of an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner’s stage performances are far more relevant to the “commercial successes in the performing arts” criterion.

Nevertheless, counsel argues that the petitioner’s solo appearance at places such as the University of California, Los Angeles’s Melnitz Hall and the Bellagio Hotel in Las Vegas are adequate to satisfy this

criterion. The petitioner, however, provides no evidence showing that the petitioner's solo performances at those events attracted national attention. Without evidence showing, for example, that the petitioner was the regular headlining act or that his show drew record audiences, a non-recurring solo performance at a hotel in Las Vegas is not adequate to demonstrate sustained national acclaim. In order to demonstrate *sustained* national acclaim as a performing artist, the petitioner must provide evidence showing that he regularly performed at top national venues as the main act. In this case, the petitioner has not provided adequate evidence to demonstrate that his small number of solo stage performances enjoy a national or international reputation.

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

The record contains evidence of several music license agreements for the Red Elvises' music, but none totaling more than \$3000. There is no evidence showing that the amounts received by the petitioner or his band are significantly high in relation to those of other professional musicians.

In regard to the petitioner's contracts for commercials, concerts, festivals, and special events, there is no evidence showing that the amounts involved reflect significantly high remuneration when compared to the earnings of other professional performing artists. We acknowledge that the petitioner has appeared in advertisements for Sony and Sprint PCS, but there is no evidence showing that that the petitioner received 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 regulation calls for commercial success in the form of "sales" or "receipts"; simply documenting the petitioner's participation in a stage performance, motion picture film, or musical recording cannot meet the plain wording of the regulation. The record contains no evidence of documented "sales" or "receipts" to show that that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Nor is there any evidence of compact disc or record sales of the petitioner's music.

In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the performing arts field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every performer who has appeared on stage, or who enjoys a degree of professional success in his field, has earned sustained national or international acclaim. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without demonstrating national or international acclaim.

Review of the record does not establish that the petitioner has distinguished himself as a performer to such an extent that he may be said to have achieved sustained national or international acclaim. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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.