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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: JUN 02 2005

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 that the beneficiary had the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the director used an inappropriate standard and wrongly dismissed probative evidence. The director found that the beneficiary met only one of the ten regulatory criteria, at least three of which must be met to establish eligibility. For the reasons discussed below, we find that the beneficiary also meets a second criterion. As also discussed below, however, we find that the evidence submitted falls far short of meeting a third criterion. Counsel's specific assertions will be addressed below.

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 regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below.

On appeal, counsel asserts that the evidence for each criterion need not demonstrate national acclaim; rather, the evidence should demonstrate such acclaim when considered cumulatively. This office consistently holds that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence

itself must be evaluated in terms of whether it is indicative of or at least consistent with national or international acclaim.

This petition seeks to classify the beneficiary 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, is claimed, meets the following criteria.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In 1988, the beneficiary and his partner received a Wallace Award as Queensland Entertainer of the Year. The *Sun's* coverage of the award indicates that it has brought them "Statewide recognition." In his request for additional evidence, the director requested evidence as to the significance of this award. In response, Michael Preston, President of the Queensland Variety "Wallaces" Awards asserts that the awards are "recognized nationally in Australia and New Zealand." [REDACTED] does not indicate whether acts outside of Queensland are considered for these awards.

The director concluded that the 1988 award was local. On appeal, counsel asserts that the director's conclusion was based on speculation and not supported by the evidence. The petitioner submits a letter from [REDACTED] Director of the Australian Entertainment "Mo" Awards. [REDACTED] asserts that the Wallaces and the Mo awards are "equals in representing their particular regions."

It is not mere speculation that the Wallaces are local Queensland awards. The regional nature of the award is apparent from its name and the local media coverage. [REDACTED]'s letter only confirms this conclusion, stating that both the Wallaces and Mo awards represent equal but separate regions. The burden of proof to establish that the awards are national is on the petitioner. The petitioner has not submitted any evidence that entertainers from around Australia, including beyond Queensland, compete for Wallaces. The record does not include national media coverage of any Wallaces competition or even local media coverage outside of Queensland. Thus, we concur with the director's conclusion that the petitioner has not established that the Wallaces are nationally recognized such that winning such an award is indicative of national or international acclaim.

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 1994, a Gold Coast newspaper, the *Weekend Bulletin*, pictured the beneficiary and his partner with a caption regarding their beginnings in Gold Coast and their recent performances abroad. There is no article accompanying the photograph and caption. In 1998, the same paper published a follow-up article, reporting on the duo's move to the United States. In 1997, a German newspaper included what appears to be an advertisement for a variety show featuring the beneficiary and his partner. The same year, another German

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

newspaper included a promotional photograph of the beneficiary and his partner. The translation of the text provided by the petitioner is not complete; however, it appears from a cursory review of the full German text that it is a promotional piece for [REDACTED] which includes "Clowns und Jongleure freuen" in addition to the beneficiary's act. Also in 1997 and 1998, German newspapers reviewed the Krone Circus, including references to the beneficiary's act. In 1998, *The Branson News* featured the beneficiary and his partner in an article about their performances as special guests of [REDACTED] at his Branson theater and their ten-city tour with him. In 2001, two French newspapers published promotional pieces about the beneficiary's upcoming two shows at the Gespe Cultural Center. The second article includes no byline, suggesting it may be a press release by the Gespe Cultural Center. Another French newspaper included an advertisement for the shows.

The director concluded that the petitioner had not established that the above publications were major media as the record did not include circulation data for the publications. The director also noted the brief mentions of the beneficiary and the fact that some of the materials appeared to be advertisements.

On appeal, counsel asserts that the director erred in requiring that the evidence appear in nationally circulated publications. Counsel reiterates her claim that the evidence for each criterion need not establish national acclaim and asserts that live performers are not covered nationally.

While the evidence submitted to meet a particular criterion need not establish national acclaim by itself, it must be indicative of or at least consistent with national acclaim. We acknowledge that live performers are typically reviewed in local papers. As such, it is not remarkable that the beneficiary's live performances have been reviewed in local papers. Such coverage does not garner the beneficiary any national or international attention. Moreover, counsel does not respond to the director's concern that some of the materials only mention the beneficiary in passing and, thus, are not "about" the beneficiary. Further, counsel does not respond to the director's concern that some of the materials appear to be press releases and advertisements. Such materials are far less persuasive evidence of national acclaim than independent journalistic coverage. Finally, while the record includes some references to television appearances by the beneficiary, the petitioner submitted no evidence that the beneficiary was interviewed or otherwise the subject of journalistic coverage during a nationally broadcast program.

The local Gold Coast and Branson articles are about the beneficiary, but do not appear in major media as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). While the regulation at 8 C.F.R. § 204.5(h)(4) allows "comparable" evidence when a criterion is not applicable to the alien's field, the petitioner has not established that this criterion is not applicable to artists who perform live. Regardless, we do not find that local media coverage is "comparable" to major media coverage. The reviews are not primarily about the beneficiary and, thus, do not meet the plain language of this criterion. Once again, brief mentions in reviews primarily about the Krone Circus are not "comparable" to media coverage that is primarily about the beneficiary. The remaining materials appear to be press releases and paid advertisements. As discussed above, such materials are not persuasive evidence. In light of the above, we concur with the director that the beneficiary does not meet 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 beneficiary and his partner "are generally considered to have revived and refined the art of Australian Knockabout Acrobatics, all but lost before they came on the scene." Counsel asserts that this style

of acrobatics was once popular in Australia but “nearly forgotten” until reintroduced by the beneficiary and his partner. Counsel references two promotional articles in French newspapers; one indicating that the beneficiary and his partner are the only “representatives” of the once popular knockabout style and the other stating merely that they have been “inspired by an old Australian tradition.”

The petitioner also submitted letters attesting to the beneficiary’s role in the field of acrobatics. [REDACTED] former Senior Finance Officer of Australia’s governmental arts funding and policy board, indicates that he contributed to the establishment of Australia’s first circus school. [REDACTED] states that while Australia’s circus industry declined after 1945, the beneficiary’s act was “among the ‘sparks’ of renewal that began to emerge in the 1980s.” He notes that [REDACTED] Australia’s “legendary” acrobat, was the beneficiary’s mentor. [REDACTED] characterizes the beneficiary as “one of the best – possibly the very best – comedy acrobatic acts that Australia has produced in recent decades.”

[REDACTED] Programming Manager for [REDACTED] asserts that he met the beneficiary through the children’s acrobatic training organization, the Flying Fruit Fly Circus. [REDACTED] states that several children have graduated to [REDACTED] and, thus, “many of our top performers have trained with or under” the beneficiary and his partner.”

[REDACTED] a Las Vegas entertainer, provides general praise of the beneficiary’s act, describing it as “unique.” [REDACTED] an Australian award-winning producer and choreographer, asserts that the beneficiary and his partner have two acts that can each be sustained for 30 minutes, rare for acrobatic performers. [REDACTED] Personal Manager to [REDACTED] praises the beneficiary and his partner “for both their originality and their innovative presentation of the acrobatic arts.” He attests to their “stated willingness to teach and pass on the true secrets of their original approach to the comedy/acrobatic genre to gifted students of the art.”

[REDACTED] the director of the beneficiary’s 2001 show in France, states:

As an active director, performer and teacher I incorporate Australian Knockabout/Slapstick as a physical tool to teach actors about partner stage work. My method *Quantum Theatre: Slapstick to Shakespeare* is based on this technique learned from [the beneficiary and his partner] and their teacher Cletus Ball. This method has been used while I was employed with organizations such as: the Australian, National Institute of Dramatic Arts, the national Bell Shakespeare Company, Charles Sturt University; the Swedish, national circus high school; the American, [REDACTED] and the San Diego Repertory Theater.

[REDACTED] concludes that the beneficiary and his partner “set the standard for balancing technique and friendly, direct entertainment in comic acrobatics.”

In response to the director’s request for additional evidence, the petitioner submitted a letter from the beneficiary’s U.S. agent [REDACTED] states:

[The beneficiary and his partner] are undoubtedly the best comedy acrobatic duo act in the world today, specializing in a style of acrobatics known in the business as “knockabout.” This unique style originated in Australia in the 40’s and was very popular until the 70’s, but today

[the beneficiary and his partner] are the only act in the world carrying on this style. The acrobatic tricks they perform, like "head to head balance," their male contortion feats and extremely high throws set them aside from all other acrobatic acts.

Finally, the beneficiary's mentor and teacher, [REDACTED] discusses his own performances on the [REDACTED] Show and at Royal Command performances. He notes that he started teaching in the mid 1970's and that the beneficiary and his partner were original students. He asserts that the beneficiary and his partner have achieved the highest level of skills and concludes that they "have perfected skills that make them not only unique but also very different and superior to any other acrobatic act of their type working internationally today."

The director concluded that the beneficiary's style was not unique, but learned from [REDACTED] and that it had not proven influential because the beneficiary and his partner are the only ones performing knockabout acrobatics.

On appeal, counsel asserts that the director's two conclusions are contradictory to each other. Counsel quotes three definitions of "original." Addressing these definitions, counsel appears to acknowledge that the beneficiary's style is not "of, relating to, or constituting an origin or beginning: initial" or "not secondary, derivative, or imitative." Counsel relies on the third definition: "independent and creative in thought or action: inventive." Counsel acknowledges that the beneficiary's work "follows the strong tradition of Australian comedy acrobatics" but claims that it is not "derivative or imitative." Counsel notes the references to the beneficiary's unique and original style in the witness letters. Finally, counsel asserts that the lack of other acrobats performing knockabout acrobatics is due to the difficulty of the techniques.

In order to constitute an original contribution of major significance, the accomplishment must be both original and have a demonstrable influence on the field or set a standard for which others aspire, such as a world record. Assuming that we considered Australian knockabout to be original, we concur with the director that [REDACTED] is the individual responsible for its "revival."² [REDACTED] is responsible for the children's circus, The Flying Fruit Fly Circus, where he personally taught acrobatics. While the beneficiary and his partner are clearly successful students of [REDACTED] cannot impute his influence to them.

Moreover, it is not contrary to conclude that not only is the beneficiary's style learned from his mentor there is no evidence that the beneficiary's style has been influential. An act today, even if successful and a crowd pleaser, can be derived from a previous tradition but still not inspire other acts in the same style. Assuming that the beneficiary's specific stunts are not amenable to duplication by other acrobats, the record does not establish that the knockabout slapstick style is any more demanding than other types of acrobatics. Thus, if the beneficiary's act were truly a contribution of major significance in the field of acrobatics, we would expect to see his style, as opposed to that of [REDACTED] studied at top-level acrobatic schools.

The letter from [REDACTED] suggests an influence by the beneficiary and his partner, but is too ambiguous. [REDACTED] acknowledges being influenced by [REDACTED] in addition to the beneficiary and we note that [REDACTED] has authored an article about [REDACTED]. In that article, [REDACTED] indicates that a member of his [REDACTED] was named [REDACTED]. If [REDACTED] is the same Ira that performed in a trio with [REDACTED] we can

² [REDACTED] has been performing knockabout comedy since the 1950's, suggesting knockabout comedy never completely lost its popularity.

hardly conclude that the beneficiary and his partner, students of [REDACTED] are significant influences on Mr. [REDACTED]

In light of the above, we do not find counsel's assertion that the director used circular logic to dismiss the evidence relating to this criterion. Rather, we concur with the director's analysis.

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

The beneficiary and his partner have performed at international venues and on cruises. The record contains some references to television performances, but the only performance documented is for Variete Producciones in Chile. The director concluded that this criterion relates to visual artists. On appeal, counsel asserts that this criterion applies to all the arts. Noting that the Board of Immigration Appeals included golf as an art, counsel opines that it "is difficult to image how the beneficiary's performances before live audience could be anything other than 'exhibitions or showcases.'" In the alternative, counsel asserts that the beneficiary's performances serve as comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4).

We find that the word "display" strongly suggests that this criterion is primarily applicable to visual artists. That said, we agree with counsel that performing artists can meet this criterion through comparable evidence. Nevertheless, such evidence must be truly comparable to the type of exclusive display in a prestigious exhibition or showcase that is required for visual artists. Specifically, it is inherent to the field of visual arts to display one's work for sale. Not every gallery display can be considered an exhibition or showcase such that it is indicative of or consistent with national acclaim. Similarly, the beneficiary is an entertainer; it is inherent to his field to perform for an audience. Not every theatrical performance is an artistic exhibition or showcase. For example, not every movie released in the theaters is displayed at an artistic exhibition or showcase. A showing at a prestigious film festival, however, is more persuasive. We do not find that a circus is an artistic exhibition or showcase. The record contains no evidence that the beneficiary has performed at an exclusive exhibition or showcase of top acrobatic acts from multiple circuses, such as the festivals listed on the Circus Oz promotional materials contained in the record. Thus, we find that the petitioner has not established that the beneficiary meets this criterion.

In reaching our conclusion under this criterion, we acknowledge that the beneficiary has performed at impressive venues. While notable, we will not presume that every act booked in a prestigious venue meets this criterion any more than we would find every athlete that plays in a major league stadium meets this criterion.³ As noted by the director, the significance of the venues was a factor in determining that the beneficiary has played a leading or critical role for an organization with a distinguished reputation pursuant to 8 C.F.R. § 204.5(h)(3)(viii). In addition, counsel provides no explanation for asserting that the beneficiary meets this criterion through comparative evidence while not addressing the one criterion specifically relevant to the beneficiary's occupation as a performing artist. Specifically, the size of the venues where the beneficiary has performed, if supported with the proper evidence not submitted in this case, could serve to meet the commercial

³ Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

success as a performing artist criterion set forth at 8 C.F.R. § 204.5(h)(3)(x). The petitioner, however, has not submitted the type of box office data required to meet that criterion. Thus, we will not address that criterion.

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 beneficiary meets this criterion and we find that the record supports such a conclusion.

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

In response to the director's request for additional evidence, [REDACTED] Entertainment Manager for the petitioner, asserts that the petitioner pays the beneficiary and his partner \$3,600 per week, "the highest that we have paid to any acrobatic act . . . and is far above the usual compensation for acts of this type." Monique Nakachian, Executive Agent of the Tavel International Agency, states that the beneficiary and his partner "are in the top money bracket for acts of their type and our agency has often employed them in some of those most prestigious venues, TV shows and galas over the last 10 years." [REDACTED] notes that the Tavel International Agency is "the biggest and most powerful artists agency based in Europe." [REDACTED] a booking agent, affirms that the beneficiary and his partner "are in the top money bracket for acrobatic acts." [REDACTED] proprietor for [REDACTED] asserts that she booked the beneficiary and his partner for Royal Caribbean cruises where they were "offered a premium salary putting them in the highest category of any artists performing in their fleet."

The director concluded that while the authors of the above letters were knowledgeable, government data regarding wages in the field would be more persuasive. On appeal, the petitioner provides data regarding wages for "artists, performers and related workers," but it is not clear whether the data represents average wages or high-end wages. The materials submitted on appeal suggest that data specific to acrobats is not available from the Bureau of Labor Statistics. The petitioner also submits a new letter from [REDACTED] indicating that acrobats in Europe, of which she has represented 4,000, receive between \$1,500 and \$3,000 per week.

We find that the above letters, especially the letters from [REDACTED] are persuasive. While mere attestations of high compensation are not always sufficient, we acknowledge the limited government data for the field and the authors' expertise and knowledge of both the beneficiary's wages and the top wages in the field. Thus, we find that the petitioner 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 beneficiary 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 beneficiary shows talent as an acrobat, but is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established the beneficiary's 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.