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FILE: [Redacted]
WAC 03 192 52458

Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2005

IN RE: Petitioner: [Redacted]
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.

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 Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a magician. The petitioner submitted supporting evidence with his petition and in response to the director's Request for Evidence (RFE) including documentation of his awards and their significance, numerous media articles about his work, documentation of his performances at various venues in his native Argentina and abroad, his membership in a professional magician's association, and five letters of recommendation from other magicians including Siegfried and Roy. On appeal, the petitioner submits a second letter from Siegfried and Roy, a letter from the International Federation of Magic Societies (FISM) and additional information about FISM and the

Worldwide Magic Competition. We find the record sufficient to satisfy three of the eligibility criteria discussed below and only briefly address counsel's far less persuasive arguments regarding the remaining criteria the petitioner claims to meet.

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

The record shows that the petitioner won the First Prize in Stage Illusions at the FISM World Magic Championships in 1997. The letter submitted on appeal from FISM Secretary General, [REDACTED] explains that FISM organizes the World Magic Championships once every three years and that magicians compete in eight categories. The winner of each category is deemed "World Champion" for their specific category. Mr. [REDACTED] notes that a World Champion may not be named if the jury feels that none of the competitors deserve this title. Mr. [REDACTED] confirms that before the petitioner won his World Champion of Stage Illusions in 1997, that title had not been awarded for 15 years.

Mr. [REDACTED] statements are corroborated by the submitted printouts from the FISM website, which shows that prior to the petitioner's Stage Illusion title in 1997, no championship had been awarded in this category since 1982. [REDACTED] National President of the Society of American Magicians (SAM) further explains that "[t]o win at FISM is to be awarded the most prestigious award in magic. Only a handful of magicians in the world have won at FISM. Anyone that wins first place at FISM is recognized internationally as a world champion. . . . To say this is the Academy Award of magic would be an understatement." The prestige, competitiveness and international recognition of the petitioner's FISM World Magic Championship award is also affirmed by seven recommendation letters from magicians, including [REDACTED] and [REDACTED] who the record shows won First Prize in the Manipulations category at the FISM 1997 World Magic Championship. In their second letter submitted on appeal Siegfried and Roy explain that they were present during the petitioner's performance at the 1997 championship and that "FISM is the most difficult international award to obtain in the field of magic. . . . Any magician who wins the FISM is one of the best magicians in the world. . . . To win a FISM is to attain the highest accolade in magic." The record contains 27 articles about the petitioner that discuss or mention his FISM award and that were published in Argentine newspapers and magazines between 1997 and 2002. One article, "Tribute Paid to Magician Barragán," published in the August 21, 1997 edition of *Crónica* reports that the Argentine Minister of Culture, [REDACTED] paid tribute to the petitioner as the "new World Magic Champion." The director did not fully address this evidence which we find establishes the international recognition of the petitioner's FISM award and his resultant sustained national acclaim as a magician in Argentina.

The record also documents the petitioner's receipt of three awards from the *Entidad Mágica Argentina* (EMA): a Grand Prize and the First Prize in Great Illusions at the Fourth Argentine Convention of Illusionism in 1996 and the Chevalier Audrey Award in 1997. With his RFE response, the petitioner submitted a printout from the EMA website which states that the organization is "the biggest and most important magic society in Latin America" and has "organized four Argentine Conferences of Illusionism." A second printout submitted with the RFE response explains that the Chevalier Audrey Award is "the highest honor [of] the *Entidad Mágica Argentina* yearly awarded to those magicians whose important work in the field of magic has been prominent." The printout features a photograph of the petitioner as the 1997 recipient of this award. Two articles published in an Argentine newspaper and a magazine discuss the petitioner's receipt of these awards.

The record establishes that the petitioner received one internationally recognized and three nationally recognized prizes in his field between 1996 and 1997. Repeated media coverage of the petitioner between 1997 and 2002 shows that his FISM award brought him sustained acclaim in Argentina. Accordingly, the petitioner meets this criterion.

(ii) 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 petitioner initially claimed to meet this criterion as a member of SAM, EMA, *Federacion Latinamericana de Ilusionismo*, *Ciculo Magico Argentino*, and *Centro de Estudios Dedicados al Ilusionismo*. The record documents the petitioner's associate membership in the SAM, but the submitted printout from the SAM website states that the Society "recognize[s] and grant[s] equal respect to professional magicians, amateur magicians and enthusiasts, youth magicians, collectors and historians, inventors, manufacturers, and dealers." This printout does not demonstrate that outstanding achievements are prerequisite to SAM membership. The profile of the petitioner contained in the FISM printout submitted on appeal lists his membership in the other four organizations, but the record contains no corroborative documentation of his membership in any of these associations. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, counsel claims the petitioner meets this criterion through his membership in the FISM World Champion's Club. The submitted printout from the FISM website states, "Every winner of a World Championship of Magic title become member [sic] of the WCC (World Champion's Club). The WCC is a very exclusive club by nature and has as main objectives [sic]: to promote the Art of Magic around the world[,] to promote its members." The printout indicates that the sole criterion for WCC membership is winning a World Championship of Magic title. While the record shows that such titles are outstanding achievements, we will not find an alien eligible under more than one category based on a single accomplishment. The statute requires that an alien demonstrate sustained national or international acclaim and that his or her achievements be "recognized in the field through extensive documentation." Section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). An alien may meet these requirements through a single achievement only if he or she has won a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). Absent such an award, the petitioner must meet at least three of the ten other regulatory criteria or present comparable evidence of his or her eligibility if the those criteria do not readily apply to his or her occupation. 8 C.F.R. § 204.5(h)(3), (4). In this case, the petitioner's WCC membership is a benefit and direct result of his primary achievement, the FISM award. We have discussed and credited the petitioner's FISM award under the first criterion. The record does not demonstrate that the petitioner's SAM or any of his other purported memberships satisfy this criterion.

(iii) Published material 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.

The record contains 31 articles that discuss the petitioner and his work that were published between 1996 and 2002. With his RFE response, the petitioner submitted evidence that the majority of these articles were published in major newspapers and magazines with national circulation in Argentina and some of which are also distributed to other Latin American countries, the United States and Canada. Almost all of the articles feature

photographs of the petitioner and primarily focus on him and his work, including reports about his FISM award and critical reviews of his magical musical, "Barragán, the Magician." These articles reflect the petitioner's sustained acclaim in Argentina from 1996 to less than a year before this petition was filed. The director did not fully address this evidence, which we find sufficient to meet this criterion.

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

This criterion generally applies to the visual – not performing – arts. However, counsel claims the petitioner meets this criterion and submits substantial relevant evidence. Accordingly, we have considered these supporting documents as comparable evidence of the petitioner's eligibility under this criterion pursuant to 8 C.F.R. § 204.5(h)(4).

The record contains programs from the 2001 Shanghai International Magic Festival with photographs and a short biography of the petitioner and which show that he was a featured performer in the opening ceremony of this festival. A cable dated November 9, 2001 from the Argentine General Consul in Shanghai to the Director of Cultural Affairs in Argentina states:

I am pleased to inform Your Excellency that yesterday, at the opening of 'International Magic Festival and Competence' which takes place in the frame of the Shanghai International Festival of Arts, the Argentine World Magic Champion Carlos Barragán was the central figure, among a great number of outstanding magicians and illusionists. . . . His long awaited presentation – the 'Plat de Resistance' [sic] of the show which took place in a sold-out auditorium for 10,000 spectators – deserved the praise and approval of an enthusiastic audience.

Peter J. Reveen, a former magician and now manager of the magician Lance Burton, also states that the petitioner's "brilliant routine, 'The Time is Now,' closed the Gala Opening Ceremony, to a standing ovation, at the Shanghai International Magic Festival." An article published in the September 7, 2002 edition of *Noticias* reports that "[l]ast year, when [the petitioner] made a presentation in China, his name was on the cover of all newspapers and the Chinese opened their eyes as never before and never after."

The petitioner also submitted evidence that he was an invited and featured performer in the International Gala Ceremony of the FISM 2000 Worldwide Congress of Magic in Lisbon. In addition, the record shows that the petitioner performed at the royal wedding celebration for the Dutch Prince Willem-Alexander and his Argentine bride, Máxima Zorreguieta, on February 2, 2002. A letter from the Ambassador of the Netherlands in Argentina thanks the petitioner and states, "Your performance contributed to making that day unforgettable." Finally, the record contains seven favorable reviews of the petitioner's musical magic show, "Barragán, the Magician," six of which were published in major Argentine newspapers. This show was presented at the Metropolitan Theater in Buenos Aires, which the record indicates is a distinguished performance venue. The evidence thus establishes that the petitioner was a featured performer at two major international magic festivals and that he has performed in Argentina in a manner reflective of sustained national acclaim. The record indicates that the petitioner's performance venues were comparable to exclusive artistic showcases or exhibitions and were of a much higher caliber than routine appearances by magicians in the regular course of their occupation. The director did not fully assess this evidence, which we find sufficient to meet this criterion.

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

As evidence of the petitioner's eligibility under this criterion, counsel cites 11 of the petitioner's performances. Yet even when an artist works as part of an ensemble, his or her individual performances do not meet this criterion. To satisfy this category, a petitioner must show that the alien performs a leading or critical role for distinguished organizations or establishments as a whole, not individual shows presented by such organizations or establishments. Accordingly, the petitioner does not meet this criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that his achievements have been recognized in his field and that he has achieved sustained national acclaim in Argentina as an artist. The petitioner has established that he seeks to continue working in his field in the United States and that his entry will substantially benefit prospectively the United States. The petitioner has thus demonstrated his eligibility for classification as an alien with extraordinary ability under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.