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U.S. Citizenship  
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: SEP 06 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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 athletics and 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 December 24, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese acrobatics performer."

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.*

We note that the plain wording of this criterion requires “nationally or internationally recognized” prizes or awards for excellence in the field. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his individual awards.

The petitioner submitted non-certified translations of the following award certificates:

1. “First Grade Prize in Acrobatics in 1991 National Art Exchange Performance”
2. “First Grade Prize in Performance Art in 1991 National Art Exchange Performance Acrobatic Series”
3. “Best Stage Performance Art Prize in 1994 National Acrobatics Artists Competition”
4. “Outstanding Young Performer Prize in 1995 National Young Acrobatics Artists Competition”

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. We note that none of the award certificates presented by the petitioner comply with the regulation at 8 C.F.R. § 103.2(b)(3).

The significance and importance of the certificates presented by the petitioner are not self-evident. The evidence of record does not indicate the total number of certificates annually distributed by the entities that recognized the petitioner, how many other individuals achieved a level of recognition similar to that of the petitioner, the criteria used in determining recipients for each particular award, or the level of media coverage associated with the award presentations. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that the certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. Contemporaneous evidence of national recognition associated with the awards is of far greater evidentiary value, particularly when the statute requires “extensive documentation” of sustained national or international acclaim. In this case, the petitioner has not shown that his awards are widely recognized beyond the organization that presented them.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any acrobatic awards subsequent to 1995. The absence of such awards suggests that the petitioner has not sustained whatever acclaim he may have earned in China.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a one-sentence letter stating that he worked in the “An Hui Province Acrobatics Troupe from September 1990 to May 2003.” The record contains no evidence showing that the petitioner’s

role in this troupe was any more important than that of the other performers. For example, the record lacks published reviews of the petitioner's performances to demonstrate that his acrobatic roles in the troupe earned him significant acclaim throughout China. Nor does the record adequately demonstrate that the An Hui Province Acrobatics Troupe enjoys a distinguished national or international reputation. In conclusion, we find the petitioner has not established that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

On June 5, 2004, the director requested further evidence pertaining to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3) and (5).

In response, the petitioner submitted a non-certified translation of a letter from the China Artists' Association indicating that the petitioner received "the allowance of the Second Grade Expert for this great contribution in improvement of Chinese Peking Opera Performance." The petitioner, however, seeks classification as a "Chinese acrobatics performer" rather than as a "Chinese Peking Opera" performer. Aside from failing to submit a translation in compliance with the regulation at 8 C.F.R. § 103.2(b)(3), there is evidence showing that being a "Second Grade Expert" represents a significant national honor or satisfies any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The petitioner also submitted a photocopy of an undated "Art Achievement Award" certificate for "contribution to the cultural diversity in USA," but there is no further evidence or explanation regarding the significance of this certificate.<sup>1</sup> There is no evidence showing that this award constitutes a nationally recognized performing arts award.

The director found the petitioner had 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 director's decision also noted an absence of evidence showing that the petitioner will work as an acrobatic performer in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise." Subsequent to his arrival in the United States, there is no evidence showing that the petitioner's primary occupation involves acrobatics. For example, there is no documentation showing that the petitioner has regularly taken part in performances here in the United States.

On appeal, the petitioner submits a letter from [REDACTED] who identifies himself as President of the Anhui Acrobatics Troupe. [REDACTED] states:

[The petitioner] has received many international and national Acrobatics awards due to his Acrobatics achievements, including: "Excellent Achievement Award" of China National Acrobatics Competition, the highest award of "the Hundred-Budding-Blossom Golden Prize" and many more. And he is a member of the China Artists Association.

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<sup>1</sup> Examination of this photocopied certificate reveals a dark shaded strip around the petitioner's name consistent with the petitioner's name having been superimposed on the original certificate. Without the original certificate showing that no alteration occurred, we cannot accept the photocopy as evidence.

The appellate submission, however, includes no first-hand evidence of the above prize and award, or of the petitioner's membership as an acrobat in the China Artists Association. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)).

The appellate submission includes 19 photographs of various acrobatic prizes and poses. None of the photographs were taken at close enough range as to identify the wording on the prizes. Aside from the blurred photographs themselves, there is no evidence showing that the petitioner himself received these prizes. The petitioner offers no explanation as to why these prizes and the prize and award mentioned in the letter from [REDACTED] were not submitted with the petition or in response to the director's request for evidence. Under the photographs of the acrobatic poses appear captions such as "the third from the left is the petitioner," "the lower one is the petitioner," "the middle is the petitioner" and "the up one is the petitioner." While the majority of the photographs purported to be of the petitioner picture male acrobats, two of the captioned photos specifically identify the petitioner as a performer who appears to be female (based on attire and anatomical features). The petitioner has not resolved this discrepancy.

In regard to the new prizes and membership mentioned for the first time on appeal, we note that the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits unsubstantiated documentation on appeal. However, the AAO will not consider this new evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. If the petitioner had wanted the additional prizes and membership to be considered, he should have submitted those documents in response to the director's request for evidence. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted for the first time on appeal.

It should be noted that the record contains a copy of the petitioner's passport, issued in [REDACTED] the Ministry of Foreign Affairs of the People's Republic of China on September 5, 1994. Under "Profession," the passport identifies the petitioner as an "Engineer," despite the petitioner's claim that he is nationally recognized in China for his work as an acrobat. The petitioner has not resolved this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case 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 petitioner has also failed to demonstrate that he will continue working as an acrobat here in the United States.

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 or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a 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.