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**U.S. Citizenship
and Immigration
Services**



B2

FILE: WAC 03 100 52504 Office: CALIFORNIA SERVICE CENTER Date: **OCT 27 2008**

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:



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.

3 Robert P. Wiemann, Chief
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 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.

The applicable regulation defines the statutory term "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). 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.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the arts as a circus acrobatic performer. The petitioner originally submitted recommendation letters and evidence relating to her awards and performances. The director found the evidence insufficient to establish the petitioner's eligibility under any of the regulatory criteria. On appeal, present counsel claims that the petitioner meets five criteria and submits additional evidence. Counsel's assertions and the additional evidence fail to overcome the substantive reasons for denial and we affirm the director's decision. The evidence submitted, counsel's contentions and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The director correctly determined that the evidence was insufficient to establish the petitioner's eligibility under this criterion. The petitioner submitted evidence of nine awards that she received for various gymnastics competitions in Moldova between 1990 and 1993. In addition, a letter from the President of the Republic of Moldova Artistic Gymnastics Federation attests that the petitioner won a bronze medal at the 1989 World Cup in Moscow and gold medals for parallel bars and springboard exercises at international championships in Italy and Romania. While they appear to be nationally or internationally recognized, these awards were all granted at least ten years prior to the filing of the petition. In addition, the awards were given to the petitioner for her excellence in gymnastics, not her current field of circus acrobatic performance. While there is an obvious link between gymnastics and acrobatics, the athletic field of gymnastics is not equivalent to the performing art of circus acrobatics. Without further evidence, we cannot assume that prizes won in one field are necessarily equivalent to honors earned in the other. The petitioner's gymnastic awards thus do not reflect sustained national or international acclaim in her current field and do not meet this criterion.

The petitioner also submitted evidence of three awards for circus acrobatic performance. In 2000, the petitioner received an award as the "Most Talented Female" by the "Ringling Brothers and Barnum & Bailey 130th Edition Blue Show." An accompanying certificate states that the award was granted by vote of "the cast and crew of the 130th Edition of the Greatest Show on Earth" and was presented at the "End of the Tour Party." The record contains a printout from the Ringling Brothers' website that explains the history of the circus, but does not establish its current renown or explain the significance of the "most talented" awards. Present counsel attempts to make up for this deficiency by asserting that this circus selects "only the best international circus acts" and that the petitioner's award thus shows the requisite acclaim and recognition in her field of expertise. The record does not support this claim. Without documentary evidence to support a claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The evidence shows only that the award is an internal honor limited to members of the circus itself.

The evidence regarding the petitioner's two other circus awards is also insufficient to satisfy this criterion. A letter from [REDACTED] states that the petitioner was a member of his acrobatic troupe and that the troupe won first place at the International Circus Festival in Sarasota, Florida in 1995. [REDACTED] affirms that the petitioner "was the leading performer in my troupe, and without her, our success and victory would not be possible." Yet the record contains no copy or other primary evidence of this award. On appeal, the petitioner also submits evidence that her current troupe, The Flying Tabares, won two awards at the 28th International Circus Festival of Monte-Carlo in 2004. These awards were granted a year after the petition was filed and consequently cannot be considered. The petitioner must establish her eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

(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 director found that the petitioner did not address or submit evidence for this criterion. On appeal, counsel claims the petitioner meets this criterion by virtue of her membership in the Moldova National Artistic Gymnastic Team. As discussed above under the first criterion, the petitioner's prior athletic accomplishments as a gymnast are not transferable to her current occupation as a circus acrobatic performer. In addition, the petitioner's gymnastic team membership apparently ceased in approximately 1994 when she began working with the Sandou circus acrobatic troupe, nine years prior to the filing of her petition and thus does not reflect

sustained national or international acclaim in her current field. Accordingly, the petitioner does not meet 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 director found that the petitioner did not address or submit evidence for this criterion. However, the record contains one article purportedly from the Idaho State Journal that discusses and features photographs of the petitioner's performance with the Sandou troupe. The article is not dated as required by the regulation. In addition, the Idaho State Journal is not major media, but apparently a local or regional newspaper with limited circulation. In his brief on appeal, counsel stated that additional evidence relating to this category would be submitted, but to date our office has received no further correspondence from the petitioner or her counsel. Consequently, the petitioner does not meet this criterion.

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

The director correctly determined that the petitioner did not meet this criterion. On appeal, counsel claims that the petitioner satisfies this category by virtue of her ability to perform a triple somersault as verified by two recommendation letters. The first letter is the aforementioned testimonial of [REDACTED] who previously employed the petitioner in his circus acrobatic troupe. [REDACTED] states that the petitioner "was the only woman (and probably still is) who performed the triple somersault in a beam balancing act. Nobody in the gymnastics/acrobatic community in the United States performs this type of a trick." The second letter is written by [REDACTED], Director of Entertainment for Circus Circus Hotel Casino in Reno, Nevada. [REDACTED] contracted the [REDACTED] troupe to perform at his establishment in 1996. He states that the petitioner "performed as the lead acrobat in a skill known as the Russian Bar. [REDACTED] is one of the top female acrobats to perform such an act, as evidenced by her performance of the triple somersault. Few women are capable of accomplishing the triple somersault on the Russian Bar, and only the very best perfect the skill in live performance. [REDACTED] performed the triple somersault and all of her other skills flawlessly during each and every performance of her five week contract at Circus Circus."

These letters as well as twelve others submitted with the petition were written by the petitioner's former employers, people who contracted her troupes for circus performances or other individuals who have worked with her directly. Ten of the 14 letters are dated 1996 or early 1997, at least seven years before the present petition was filed and appear to be copies of letters originally written to support the extension of the petitioner's P-1 nonimmigrant status. For example, a February 15, 1997 letter from [REDACTED] is titled, "Petition for Nonimmigrant Worker - P-1 Extension, Petitioner: Entertainment **Around the World, Inc.**, Beneficiary: [REDACTED]

Although some of the letters provide relevant information about the petitioner's experience and accomplishments, they cannot independently establish her eligibility under this criterion because they do not demonstrate that her work has made an impact in her field beyond those with whom she has worked directly. Moreover, recommendation letters solicited by an alien for her immigration case carry less weight than preexisting, independent evidence of major contributions that one would expect of a performing artist who has garnered sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

The director correctly determined that the petitioner did not meet this criterion and counsel does not contest that determination on appeal. The petitioner submitted documents, photographs and a videotape of her performances at various venues. While this evidence demonstrates that the petitioner has been active in her field, it does not satisfy this criterion. Frequent performances are requisite to successful employment as a circus acrobat. The regulation requires that evidence submitted to meet this criterion be consistent with sustained national or international acclaim and not simply document an alien's continued employment in his or her field. We note that the petitioner once toured with the Ringling Brothers and Barnum and Bailey Circus, purportedly the "greatest show on earth" and won an award for her performance. However, the record contains no independent evidence of the significance of that performance. In addition, no evidence was submitted to establish that any of the petitioner's other performances reflect the requisite sustained national or international acclaim.

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

The director correctly determined that the petitioner did not meet this criterion. On appeal, counsel maintains that the petitioner meets this criterion by virtue of her role as a leading performer with the Sandou Troupe and the Flying Tabares. The previously mentioned letter of [REDACTED] attests to the petitioner's leading role in his acrobatic troupe, but no independent evidence of the troupe's reputation was submitted. [REDACTED] states that his troupe won a first place award at the International Circus Festival in 1995, but the record contains no primary evidence of that award. The record is similarly insufficient regarding the petitioner's role in the Flying Tabares. Although the troupe's brochure identifies the petitioner as a member, it does not herald her individual contributions. We also cannot consider the troupe's receipt of awards at the 28th International Circus Festival of Monte-Carlo in 2004 because the awards were granted a year after the petition was filed. The petitioner must establish her eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. Finally, the petitioner was voted "Most Talented Female" by the "Ringling Brothers and Barnum & Bailey 130th Edition Blue Show," but the record is insufficient to establish her role in that circus or that the circus continues to enjoy a distinguished reputation. Accordingly, the petitioner does not meet this criterion.

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

The director correctly found the evidence insufficient to establish the petitioner's eligibility under this criterion and present counsel does not contest that conclusion on appeal. The petitioner's prior counsel claimed the petitioner met this criterion through evidence of her Ringling Brothers and Barnum and Bailey award and eight letters praising the petitioner's performances. Although this evidence documents the petitioner's successful employment in her field, it does not demonstrate commercial success. The record contains no documentation of box office receipts or other evidence that would show that the petitioner's performances led to significant commercial success.

On appeal, counsel requests that we apply the comparable evidence provision at 8 C.F.R. § 204.5(h)(4) because "the Circus World does not have absolute championships, Olympics, Oscars or Grammys." However, the regulation clearly states that comparable evidence will be accepted only when the other regulatory criteria do not readily apply to the petitioner's field. As the record in this case shows, at least seven of the criteria readily

apply to the petitioner's field. The record also contains evidence of at least two major, international circus performance competitions. Accordingly, there is no need to invoke the comparable evidence provision.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the petitioner is a talented and valued circus acrobatic performer, but the record does not establish that she was an alien of extraordinary ability at the time of filing. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.