



U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 03 041 51584

Office: VERMONT SERVICE CENTER

Date:

SEP 13 2006

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which 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 “alien of extraordinary ability” in the arts pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the requisite national or international acclaim.

On appeal, counsel submits a brief. For the reasons discussed below, we find that the petitioner is eligible for the benefit sought.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a “featured solo ice skater principal performer.” The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award.

The director concluded that the petitioner had performed in a leading or critical role for an organization or establishment with a distinguished reputation pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Specifically, the petitioner continues to perform in primary roles for Disney on Ice, such as Snow White in their Princess Classics. Significantly, the petitioner meets this criterion with *current* evidence consistent with *sustained* acclaim.

We find that the petitioner meets an additional two criteria as follows.

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

In addition to national and international youth awards, the petitioner won first place in the Cup of the Republic of Belarus. A letter from the Deputy Minister of Sport and Tourism for the Republic of Belarus asserts that the petitioner was a three-time national champion in Belarus figure skating. The director concluded that the petitioner did not meet this criterion, as the awards were from several years prior to the filing of the petition and the petitioner no longer competed. On appeal, counsel notes that while the petitioner no longer competes, she continues to skate in top ice shows.

We concur with counsel. While the petitioner must demonstrate *sustained* acclaim as of the date of filing, that standard does not mean that we will not consider accomplishments that predate the filing of the petition by several years when the petitioner is able to demonstrate that she has sustained that acclaim with evidence relating to other criteria. In this matter, as stated above, the petitioner continues to perform a leading or critical role for an organization with a distinguished reputation, Disney on Ice.

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

The director considered only the petitioner’s performances with Disney on Ice and concluded that they could not serve to meet this criterion. We concur with this conclusion. It is inherent to the occupation of performing artist to perform, not every performance is an artistic exhibition designed to showcase the work of the performers. That said, the petitioner also toured with the Byelorussian Ice Circus Extravaganza that featured Moscow circus performers and five skating champions. Such tours of championship skaters are designed to showcase the work of the skaters. Thus, we are satisfied that the petitioner meets 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 she has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of

expertise. The petitioner has established that she seeks to continue working in the same field in the United States. The petitioner has established that her entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

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.