

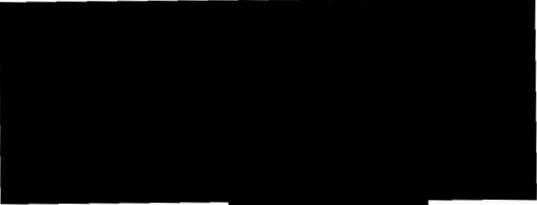


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FILE:

EAC 03 197 51806

Office: VERMONT SERVICE CENTER

Date: SEP 14 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:

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, 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 dismissed.

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 sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a statement and additional exhibits. For the reasons discussed below, we concur with the director that the petitioner has not established sustained acclaim. As noted by the petitioner on appeal, he came to the United States in October 1998, more than two and a half years before filing the petition. The petitioner’s move, however, does not waive the requirement of demonstrating *sustained* acclaim in June 2003, when the petition was filed. Thus, in order to establish eligibility, the petitioner must demonstrate his current acclaim beyond the local community where he now resides.

Moreover, the petitioner indicated on Part 4 of the petition that he had never been the beneficiary of a previous petition. On January 28, 2000, however, the petitioner filed an earlier petition, EAC-00-088-51423, in his own behalf. The director denied that petition on March 6, 2001 and this office denied the appeal of that decision on March 28, 2002. The petitioner’s failure to acknowledge the filing of the earlier petition when asked on the current petition seriously diminishes his overall credibility.

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. It should be reiterated, however, that the petitioner must show that he 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 an acrobatic artist. 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 criteria follow.

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

Initially, the petitioner submitted an alleged webpage from the “CULART” website. The page, however, does not include a web address. Moreover, the record lacks evidence regarding the individual or entity responsible for this site. On appeal, the petitioner concedes that this webpage is his own. Thus, the petitioner has not established that this webpage is credible independent evidence of the information on the page.

In his personal statements, the petitioner consistently claims to have won a Silver Clown Award at the 13th Monte Carlo International Circus Festival in “Morocco” in 1988. The petitioner also submitted numerous photographs with attached self-serving captions, also attesting to the 1988 festival in “Morocco.” These manufactured documents do not establish the information alleged in the captions. In addition, the petitioner submitted page 49 of an unidentified publication indicating that the Tianjin Acrobatics Troupe won a Silver Clown Award at the 13th Monte Carlo festival in “Morocco” in 1987. The petitioner submitted a photograph of a Golden Clown statue, but the engraving is illegible. Every reference letter, caption, translation and statement by the petitioner asserts that the Monte Carlo festival is in Morocco. We take administrative notice of the fact that Monte Carlo is, in fact, in Monaco, not Morocco. Thus, the credibility of the petitioner, the publication from which page 49 is copied, the translator or the original documents from which the translation is derived and the petitioner’s references is somewhat diminished.

The petitioner also submitted a Certificate of Special Honor from the Chinese Ministry of Culture and a Certificate of Honor from the Tianjin Bureau of Culture purporting to confirm that the petitioner won the Silver Clown and the French Developing Circus Art Association Award at the 13th Monte Carlo International Circus Festival. The translation of these certificates indicates that the Silver Clown was awarded in Morocco, although we are unable to discern whether that discrepancy is solely an error on

the part of the translator. The petitioner provides no explanation for relying on a certificate from officials in China to document awards in Monaco and France. The petitioner did not submit a certificate from the Monte Carlo festival, a photograph of the Silver Clown with a legible inscription or a certificate from the French Developing Circus Art Association.

Finally, the petitioner submitted a newspaper article in the *Tianjin Daily* reporting that the Tianjin Acrobatic Troupe that won the Silver Clown also won a Lu Xun award. Although the article was purportedly published in October 1988 and references a 1988 Silver Clown, it reports on a Lu Xun award for 1985-1986.

All of the above evidence is secondary evidence of the Silver Clown, the French Award and the Lu Xun award. The regulation at 8 C.F.R. § 103.2(b)(2) provides that secondary evidence is only acceptable if primary evidence, in this case the award certificates themselves, do not exist or are unavailable. The petitioner has not established that these awards either do not exist or are unavailable. As such, we do not have to accept secondary evidence. Moreover, as stated above, much of the evidence relating to this award has somewhat diminished evidentiary weight as it all references Monte Carlo as located in Morocco, not Monaco.

The petitioner did submit primary evidence of some awards. Specifically, the petitioner submitted a May 2000 plaque for "Extraordinary Expertise" from the NCBA Culture and Arts Center, the petitioner's employer. In addition, the petitioner submitted a certificate from the Organizing Committee of the 1997 China (Tianjin) Dragon and Lion Dance Guest Invited Performing Competition confirming the issuance of a "Special Award" to the petitioner. The petitioner further submitted a certificate from the China Acrobatic Artists Association confirming the petitioner's Second Prize of Excellent Papers at the 3rd Conference of China Acrobatic Theory Studies in 1994. The petitioner also submitted a 1987 Certificate of Award from the Ministry of Culture affirming the petitioner's receipt of the Silver Lion Award for the acrobatic program "Leather Straps" at the Chinese 2nd National Acrobatic Competition. Finally, the petitioner submitted evidence of youth awards.

The director concluded that the petitioner's awards were not indicative of sustained acclaim in 2003 when the petition was filed. The director further concluded that the most significant award, the Silver Lion was issued to the petitioner's entire troupe. On appeal, the petitioner asserts that the director failed to consider his Silver Clown and French awards and that the petitioner was subsequently invited to perform with Ringling Brothers and Barnum and Bailey Circus.

On appeal, the petitioner submits a videotape of a performance at the Monte Carlo festival, concluding with the troupe being handed a Silver Clown. Once again, this tape is secondary evidence of the Silver Clown. The petitioner has still not submitted the actual certificate he received from the Monte Carlo festival or the French award. The petitioner has not demonstrated that he received these awards. Moreover, the petitioner claims to have won these awards in 1988, 15 years prior to the date he filed the petition. Thus, they are not evidence of *sustained* acclaim in 2003.

The petitioner's plaque, awarded in 2000, is from his own employer. The petitioner has not demonstrated that this plaque is a nationally recognized award that the top acrobats nationally aspire to win. The petitioner has not demonstrated the significance of his other awards, some of which are limited by age and all of which date from 1997 or earlier. Thus, they predate the petition by six years or more. Finally, a job with Ringling Brothers, while competitive, is not an award or prize.

In light of the above, we concur with the director that the petitioner's prizes and awards are not indicative of sustained national or international acclaim in 2003.

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 submitted a certificate from the China Tianjin Acrobatic Artists Association asserting that the petitioner has been a "professional member" of the China Acrobatic Artists Association. The petitioner's webpage states that the petitioner "has made important contribution to the development of Chinese Acrobatic and Circus Shows. Due to his special contribution to the acrobatic art performing, he was a professional member of [the] China Acrobatic Artists Association in 1987." The petitioner also submitted evidence of judging, artist and coach appointments, which is better considered under the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (viii) respectively.

The director concluded that the petitioner had not demonstrated that the association requires outstanding achievements of its members. On appeal, the petitioner asserts that this conclusion is not true and references the claim on his own webpage. The petitioner's own webpage, however, is self-serving and cannot serve as independent evidence of the association's membership requirements. The petitioner has not submitted the official bylaws for the association, listing the precise membership requirements. As such, we cannot evaluate those requirements. Moreover, the petitioner has implied that he was only a member of the Tianjin chapter, suggesting that recognized national or international experts in the field did not judge his membership eligibility.

In light of the above, the petitioner has not established that he meets this criterion.

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.

The petitioner submitted numerous newspaper articles, most of which are about the Tianjin Acrobatic Troupe as a whole and do not feature the petitioner individually. Of the articles that do feature the petitioner, they appear local to Tianjin or in Chinese-language U.S. newspapers. The director concluded that the published materials submitted were not about the petitioner, but his troupe. On appeal, the petitioner references four articles submitted that discuss him personally, three of which

appear in the *Tianjin Daily* and one of which appears in the *China Press*, a U.S. Chinese-language publication.

Tianjin Daily appears to be a local Tianjin paper. Without evidence that the paper enjoys a significant national distribution, we cannot conclude that it constitutes major media. In addition, a newspaper printed in a language the majority of the population cannot comprehend is not major media. Thus, while we agree that some of the published materials are about the petitioner, those materials do not appear in major media.

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted invitations to judge the 2nd Wuhan International Acrobatic Festival in 1996 and the 5th China Wujiao International Acrobatic and Circus Festival in 1993. The petitioner also submitted certificates appointing him as a judge for the 3rd China XingMiao Trophy Acrobatic Performing Competition in 1997 and the 4th China Golden Lion Award Acrobatic Performing Competition. The director acknowledged this evidence, but noted that the beneficiary only judged the work of others in the "early- to mid- 1990s." On appeal, the petitioner notes that he last judged the work of others in 1997, "only a year before [he] came to the United States."

At issue is not whether the petitioner is able to provide evidence relating to a given criterion before entering the United States, but whether he enjoys national or international acclaim as of the date of filing, in this case June 2003. The evidence submitted to meet this criterion does not establish such acclaim.

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

The petitioner initially relied on his international performances to meet this criterion. The petitioner also submitted reference letters from members of the field and officials in China and Queens in New York City. The record includes little objective information about the significance of the entities in Queens. The director concluded that the petitioner had not established that he had made any original contributions to the field of acrobatics that had been recognized by independent members of the field. On appeal, the petitioner asserts that his reference letters establish his contributions and submits additional letters on appeal.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS

is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)). In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field.

██████████ Vice Chairman of the Tianjin Acrobatic Association, asserts that while judging a competition where the petitioner was competing, the petitioner was the first individual to complete a difficult somersault in his specialty. Other references affirm that this feat took place in 1978 at a youth competition. A 1986 article in the local *Tianjin Daily* reports that the petitioner's somersault is "a new innovation." Ms. ██████████ further asserts that the petitioner's "Leather Straps" routine was recognized in the media as bringing a "revolution to the acrobatic circus." The other references from China provide similar information, attesting to the prior success of the petitioner's "Leather Straps" routine, which he apparently has not performed since returning to the United States in 1998.

██████████ President and Artistic Director of the CBA Culture and Arts Center in Elmhurst, New York (in Queens), asserts that since arriving in the United States in 1998, the petitioner has been performing the "Lion Dance." Mr. ██████████ asserts that the petitioner has performed this dance in many states in the United States although the only examples Mr. ██████████ provides are New Jersey and New York. The record contains no confirmation from ABC that the petitioner performed on Good Morning America as claimed by Mr. ██████████. While some references assert that the petitioner performed during an NBA basketball games, the Chinese-language newspaper article on the performance indicates the Lion Dance was performed by Dance Beijing. The petitioner has not demonstrated any connection between himself and Dance Beijing. The record contains no confirmation from the NBA of the petitioner's purported performance. ██████████ Executive Director Tung Ching Chinese Center for the Arts in Fresh Meadows, New York (in Queens) and ██████████ Director of the Performing Arts Division of A.R.T.S. in New York, provide similar information. ██████████ a magician who lists no address or other contact information on her letter, asserts that the beneficiary has also performed the Lion Dance in Connecticut and Boston. The record contains programs for performances at cultural festivals and letters and newspaper articles confirming performances at libraries and schools in New York, New Jersey and Pennsylvania. Finally, the new letters on appeal are from individuals in New York City and provide similar information.

Although several of the references with no connection to Ringling Brothers and Barnum and Bailey Circus attest to the petitioner's performances with that circus in the late 1980's, the only evidence submitted to confirm these assertions is a circus identification for the petitioner and photographs. The

record lacks a copy of the petitioner's contract and letters from officials at Ringling Brothers confirming the nature of the petitioner's participation.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in acrobatics, it can be expected that the evidence would clearly demonstrate the petitioner's impact in the field. While the petitioner has entertained crowds and gained recognition in the local Tianjin press and the local Queens Chinese-language press, he has not demonstrated his influence in the field such that his routine is being emulated by other acrobatic troupes. For example, the petitioner has not established that he is nationally or internationally credited with inventing the concept behind the Leather Strap routine or Lion Dance or that he is nationally or internationally credited with adding influential elements to these routines. Thus, the petitioner has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As discussed above, the petitioner submitted his 1994 Second Prize of Excellent Papers. The petitioner did not submit the paper itself. As such, the petitioner has not established that it was published in a professional or major trade publication or other major media. Moreover, the prize is from 1994, nine years prior to the date of filing. As such, it is not evidence of *sustained* acclaim.

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

In his initial statement, the petitioner did not specifically claim to meet this criterion although he listed several performances as "displays." The director concluded that the petitioner has met this criterion. This criterion, however, is applicable to the visual arts. The petitioner is a performing artist. It is inherent to this occupation to perform. Not every performance is an artistic exhibition or showcase. As stated above, the record contains no confirmation from ABC regarding the petitioner's purported appearance on Good Morning America or from the NBA regarding the petitioner's purported performance during an NBA basketball game. The letters, newspaper articles and programs document that the petitioner's recent performances have been mostly limited to local cultural festivals at venues with little national recognition. Thus, the evidence submitted to meet this criterion is not indicative of or consistent with the petitioner's claim to currently enjoy national or international acclaim.

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 petitioner had not demonstrated a leading or critical role within the troupes with which he performed. On appeal, the petitioner submits a video of the "Leather Straps" performance at the Monte Carlo festival. He asserts that this video establishes that each acrobat

displayed expertise consistent with performing at the very top of the field. The petitioner's analysis is not persuasive. Nothing in the language at 8 C.F.R. § 204.5(h)(3)(viii) suggests that mere association with a reputable entity is sufficient. In order to meet this criterion, the petitioner must establish that he was hired or selected for a role that is leading or critical *in comparison* with the other roles for the organization, such as team captain.

██████████ Vice Chairman and Secretary General of the Shanghai Athlete Association, asserts that the petitioner performed in a leading role for the Tianjin Acrobatic Troupe. A "Letter of Certification" from the China Tianjin Acrobatic Troupe indicates that the petitioner had a "leading acrobatic performance" in the Leather Strap routine. Hou Quangeng, President of the Tianjin Acrobatic Troupe, also asserts that the petitioner "was employed as a leading acrobatic and circus shows [sic] by [the Tianjin Acrobatic Troupe]." The Leather Strap routine did garner media attention in the local Tianjin paper and the troupe at least performed at the Monte Carlo Festival in 1988. The petitioner has not established, however, that he was selected for a role within the troupe that set him apart from the others.

Several references also refer to the petitioner's leading role in the Lion Dance. The record lacks evidence that the petitioner has performed with this troupe outside of the Northeastern United States. Most of the performances appear to be at Chinese or Asian cultural festivals. Thus, the petitioner has not established that his Lion Dance troupe enjoys a distinguished reputation nationally.

Finally, the petitioner submitted appointment letters appointing him as a "First-rank Acrobatic Artist" for the CBA Culture and Art Center in New York and as a "First-rank Acrobatic Artist and Coach" for the ██████████ in New York. The record contains no evidence that either organization enjoys a distinguished reputation nationally.

In light of the above, the petitioner has not established that he meets this criterion.

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

On appeal, the petitioner does not contest the director's conclusion that the record lacks evidence relating to this criterion. We concur with the director.

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

While the petitioner initially asserted that he met this criterion, on appeal he does not contest the director's failure to address this criterion. We find that the record lacks box office receipts for shows where the petitioner is prominently featured in the promotional materials and, thus, can be considered responsible for the show's success. Thus, the petitioner has not established that he 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 petitioner 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 petitioner showed talent as an acrobat, but is not persuasive that the petitioner's recent achievements set him significantly above almost all others in his field. 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.