

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

MAR 05 2008

LIN 06 092 50514

IN RE:

Petitioner:

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.

Mari Pluerson
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner filed a motion to reopen concurrently with the instant appeal. The director reopened the matter on the petitioner's motion, and denied the petition again. The matter 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. 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, counsel asserts that the petitioner qualifies for this classification as "an extraordinary cultural performer regarding Cossack song and dance and horse-back riding." Counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and has submitted other comparable evidence of his extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

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

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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, filed on February 6, 2006, seeks to classify the petitioner as an alien with extraordinary ability as an equestrian and a performing artist. At the time of filing, the petitioner was working as an equestrian at the Bloomfield Open Hunt Club. Aside from horseback riding and instruction, the petitioner has performed as a Ukrainian folk dancer.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). 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.

The petitioner submitted a "Certificate of Honor" (1983) "for high results achieved in developing and promoting amateur art" at the "Regional Propaganda and Amateur Art team festival." This certificate refers to the petitioner as a "2nd year choreography student of the Kanev Vocational School of Culture and Education." The petitioner also submitted a diploma from the Kanev Vocational School of Culture and Education stating that he won "3rd place in a pulling up competition with the result of 18 times at the military sports show among the students of the School." The preceding awards reflect local student recognition rather than national or international recognition for excellence in the petitioner's field. The petitioner's receipt of awards limited to students is not an indication that he "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 petitioner submitted two color photographs of multiple award ribbons from various horse shows, but there is no indication that these ribbons were won by him or evidence that they constitute nationally or internationally recognized prizes or awards for excellence in the petitioner's field.

The petitioner submitted an affidavit from [REDACTED] Director of Agricultural Enterprise "Promin," stating: "In May, 1994, at the nationally preeminent horse competition in Drabovo, [the petitioner] won 1st place and the title of "Best Equestrian" – a major professional achievement given only to those who have reached the apex of riding." The petitioner submitted additional affidavits attesting to the petitioner's receipt of the preceding honor and other unspecified awards. In addressing the petitioner's "Best Equestrian" award, the director's decision stated:

As evidence, the record contains an affidavit from [REDACTED] Director of Agricultural Enterprise "Promin" which is a "major stud farm in a collective agricultural enterprise"; an affidavit from [REDACTED] owner of the [REDACTED] in Bloomfield Hills Michigan; and an affidavit

from [REDACTED], professional in the field. All three affidavits state that he earned that award. However, the record is devoid of primary (first-hand) evidence of the award such as a certificate or photograph of a trophy, etc. The record is also devoid of evidence from the institution granting the award that establishes the significance of the award.

We concur with the director's observations. The record includes no primary evidence of the "Best Equestrian" award from 1994, nor evidence that it is nationally or internationally recognized. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). Further, the regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

As stated above, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. Where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. Secondary evidence might be newspaper reports of the competition results. Rather than submitting primary evidence or secondary evidence of his receipt of a "Best Equestrian" award in 1994, the petitioner instead submitted third-party affidavits issued several years later attesting to his receipt of the award. In this instance, the petitioner has not overcome the absence of primary and secondary evidence demonstrating that he received this award or that it is nationally or internationally recognized. Further, we cannot ignore that the statute and regulations require the petitioner's national or international acclaim as an equestrian or performer to be *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). In this case, there is no evidence showing that the petitioner has won nationally or internationally recognized prizes or awards since he came to the United States in 1999.

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

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*,

nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner initially submitted an article entitled “Learning to vault” by [REDACTED] but there is no evidence (such as circulation statistics) showing that the article was published in professional or major trade publications or some other form of major media. The petitioner also submitted television footage featuring him, but the digital video was unaccompanied by an English language translation as required by this criterion and the regulation at 8 C.F.R. § 103.2(b)(3).

On April 7, 2006, the director issued a notice requesting the petitioner to provide evidence for this regulatory criterion. The director’s request for evidence stated:

Submit evidence of any published material about you in professional or major trade publications or other major media relating to your work in the field for which classification is sought. . . . Also submit documentary evidence to establish the importance of the publication/media. Please provide a brief summary of the contents of the submitted [digital video discs (DVDs)].

In response, the petitioner submitted a document entitled “Summary of Major Media Interviews Contained on Three Videos Submitted with Case.” The document provides a synopsis of what the translator asserts were programs “shown on a major Ukrainian news channel, KRT Kievskaya Rus TV, and on a private Russian channel.” The record, however, includes no objective documentary evidence in support of the translator and the affiants’ assertion that the preceding broadcasters were major media outlets or that the petitioner’s programs aired nationally. Further, the date of the television broadcasts was not provided as required by the plain language of this regulatory criterion.

The petitioner’s response to the director’s request for evidence included no further published material about him. On appeal, the petitioner submits published articles entitled [REDACTED] “Performance of [REDACTED],” [REDACTED] return,” “Hey, You [REDACTED] a wind in an open field,” and “Uncle [REDACTED] named our [REDACTED] a Queen.” Only the latter article specifically mentions the petitioner, but it is not primarily about him. With regard to the published material submitted on appeal, 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 it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Nevertheless, there is no evidence (such as circulation statistics), showing that the preceding articles were published in professional or major trade publications or some other form of major media. Moreover, there is no evidence of material about the petitioner in major publications or broadcast media subsequent to the 1990’s. As such, the petitioner has not established that his national or international acclaim has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

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

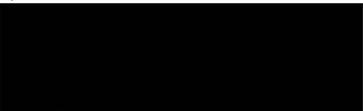
Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends 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). For example, judging a national competition for top equestrians is of far greater probative value than judging a local competition for youth or novice riders.

[REDACTED], Director of Agricultural Enterprise “Promin,” Ukraine, states that the petitioner “became an honored Judge, and member of jury at major horse race competitions” held throughout the Ukraine, Poland, Italy, Germany, Belarus, Bulgaria, Georgia, Estonia, and Latvia from 1988 to 1999. The record, however, includes no documentary evidence to support his assertion (such as confirmation from the race organizers). Nor is there evidence showing the specific competitive events judged by the petitioner, the names of the jockeys or riders he evaluated, their level of expertise, or contemporaneous documentation of his actual participation (such as an event program identifying him as a judge or juror). The record also lacks evidence establishing the level of prestige associated with judging the unnamed competitions mentioned in V.D. [REDACTED]’s affidavit. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv) specifically requires “[e]vidence of the alien’s participation, either individually or on a panel, as a judge of the work of others.” Further, the statute requires “extensive documentation” that the alien’s achievements have been **recognized in the field**. *See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i)*. As discussed previously, the petition must be filed with the initial evidence required by regulation. 8 C.F.R. § 103.2(b)(1). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). An affidavit attesting to the petitioner’s participation, therefore, would need to “overcome the unavailability of both primary and secondary evidence.” As the petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, he is presumed ineligible for this regulatory criterion pursuant to 8 C.F.R. § 103.2(b)(2). Finally, there is no evidence that the petitioner has judged any significant competitions in his field or an allied one since 1999. As such, the petitioner has not demonstrated that his national or international acclaim has been sustained. *See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3)*.

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

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



The petitioner submitted several affidavits and letters discussing his experience and activities as an instructor, an equestrian, and a performer.

Head Physician of the Health Center “Ukraine” in the Cherkasy Region, states that the petitioner was employed as a trainer at a “School of Riding” affiliated with the health center from August 1998 to August 1999. He further states:

During the period of work [the petitioner] showed himself as an honest, diligent worker. He handled all assignments with great responsibility. Here, he has managed to realize his creative dreams, combining the work of a stuntman, trainer and instructor. A thrilling equestrian sport program, which he created for performances, was great success everywhere in the district.

* * *

Being an innovator by nature, he never stopped at what has been accomplished searching for the new; he mastered new methods of training, complicated technical elements of the feats, and was their producer and performer.

The record, however, includes no evidence showing that the impact of the petitioner’s methodologies extended beyond the health center or the students under his direct tutelage.



Director of the Cherkasy Provincial Center of National Creativity and Performing Arts, states:

While working as a professional artist in the ballet of the Cherkasy Provincial Philharmonic, [the petitioner] *in his spare time actively participated in Equestrian Sports* in which he achieved many outstanding awards. [The petitioner’s] achievements have been recorded and published in [sic] by the directors of the Provincial Center of National Creativity and Performing Arts, and appropriately, [the petitioner] skills started attracting much attention of the Center where he achieved top standings and awards.

[Emphasis added]

The petitioner’s awards have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, CIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.



owner of the F... in Bloomfield Hills, Michigan, states:

I have personal knowledge that [the petitioner] is outstanding in the field of dance, and choreography, since I have had the opportunity of seeing him perform in voluntary exhibitions for my students in which he performed a choreographed series of dances both in the area of ballroom dancing, ballet, Latin dancing, and Ukrainian folk dance. Specifically, he has extraordinary ability in the performing arts in the area of Ukrainian folk dance, ballet, and popular dance in that order. There is a videotape which was produced which features [the petitioner] as a soloist and team member in a Ukrainian folk dance troupe which performed worldwide, and I show it to my students as an extraordinary example of Ukrainian folk dance. The traditions of the Ukraine as a culture are preserved in their music, dance, and "Cossack" riding.

* * *

[The petitioner] has toured extensively as a soloist and as part of a dance troupe throughout Europe, Canada, the Ukraine, and former states of the U.S.S.R and the United States. [The petitioner's] background in Ukrainian folk dance and as a professional ballet dancer in progressively responsible positions is critical to his skills and high level of critical acclaim on a national and international level as a Cossack and Roman equestrian performer, since Cossack riding and Roman riding are performed to music, and require a strong foundation of acrobatic and dance movements in a traditional classical dance form/folk dance format. His abilities and professional background in dance from 1987-1999, and choreography have enabled him to create/teach original dance-like movements performed both by himself and other professional equestrian performers for television, professional stage exhibition, and theatre productions, and to design complex riding exhibitions which were broadcast in the Ukraine and Russia over a period of several years. An example of [the petitioner] as an outstanding celebrity spokesman was submitted on C.D. for "Promin," a premier stud/riding farm in the Ukraine.

These complex productions were called "The Cossack Games," and were tremendously popular and had a widespread audience throughout the Ukraine and former states of the U.S.S.R.

* * *

[The petitioner] often performed at affairs of state in front of Congressmen and statesmen of many countries, in his home country in front of the President of the Ukraine, Vice President of the Ukraine and Mayors, including statesmen in Moscow, as a featured solo performer, professional dancer and equestrian artist. I have had the opportunity of reviewing the C.D. submitted to the U.S.C.I.S. as an example of his work, and it is extraordinary; he performs equestrian feats/complex dance/acrobatic movements which place him at the apex of his profession, and show grace, artistry and dare deviltry. He is by my estimation at the top five percent in his profession. Please note these movements cannot be performed by an amateur – they require a high level of professional expertise.

states that he worked as a "brigadier on [a] horse-tribal farm in the Agricultural Enterprise 'Promin'" from 1987 to 2000. He further states:

[The petitioner] was employed as a famous "Cossack" riding equestrian artist, and a world-class trainer/choreographer at "Promin" from 1987-1999 and also at "Jockey Group" from May, 1995 through August, 1999, where he taught artists complex riding techniques. [The petitioner] has an impressive background in the horse field, including acting as a celebrity spokesperson for "Promin," one of the leading champion horse farms in the Ukraine - there were over 175 horses in development at the time he was employed with "Promin," as is indicated by the C.D. which he submitted to the USCIS. His background included professional experience as a lead soloist for The Cherkassy State Honored Ukrainian Folk Choir, where he performed many complicated dancing parts; he was with the ballet from November, 1987 until August, 1999.

This background, as well as his outstanding reputation in Ukrainian folk dance, enabled him to perform many extraordinary acrobatic equestrian feats since dance acts as a strong creative foundation for performing as an equestrian artist. While in our employ, he developed "The Cossack Games" which aired on a major television station, Rus TV, on an annual basis from 1995-1999. His professional stature as a famous equestrian artist resulted in major television news coverage and attracted national and international attention. "The Cossack Games" were broadcast throughout the Ukraine, and the former states of the U.S.S.R. There was also limited European coverage. The leading riders in the Ukraine took place in these competitions and many times, [the petitioner] acted as a Director and Stage Producer for these performances, which involved instructing artists for enhancing dramatic effect. He was also featured as a solo performer. You will note that the video which was attached for your reference indicated his heavy role in "The Cossack Games" and highlighted his contributions to the industry.

* * *

[The petitioner] has a broad background in horse riding, and developed a unique training program for developing equestrian artists from a fundamental level. The reputations of Promin and the Jockey Group are recognized on both a national and international level for the development of fine horses and preeminent riders. [The petitioner] was among the top riders in the Ukraine in the area of "Cossack" riding, and we benefited tremendously from his association with our group.

While the petitioner participated in the Cossack Games and served as its spokesperson, it has not been established that this work represents an original contribution of major significance in his field. For example, there are no attendance figures or information from the broadcast media indicating the level of popularity associated with the event. Nor is there evidence showing that the overall success of the event was primarily attributable to the petitioner's own work.

[Redacted] Director of the Ukrainian Cultural Center in Warren, Michigan from 1989 to 2006, states that he met the petitioner in 1999. He further states: "[The petitioner] was a featured performer at numerous shows depicting Cossack horsemanship and dance in the mid-1990's and carries with him the tremendous physical ability and training to be a top Cossack rider.... [The petitioner] is one of a very few people of these people and he can both perform and teach this dying art."

[Redacted] of Warren, Michigan states:

I worked with the petitioner at the Zaporizhia circus in Ukraine during the summers of 1993, 1994, 1995 and 1996. [The petitioner] was the featured performer for all Cossack stunt work. He was known for his rare flips from the horse to ground while galloping. . . . [The petitioner] developed and perfected this rare move and it was a major attraction at our performances.

[The petitioner] also perfected hanging off the horse's side while at a gallop, standing on the horse at a gallop and jumping. These feats are dangerous and difficult and only the very best can implement such artistry.

The preceding affidavits discuss the petitioner's talent as a performer and an equestrian and his activities in the Ukraine during the 1990's, but they fail to demonstrate that he has made original contributions of major significance in his field. 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. Even if the petitioner's methods of horse training and stunt techniques were found to be original, there is nothing to demonstrate that his particular methods and techniques had major significance in the field. For example, there is no evidence to indicate that the petitioner's techniques have been widely adopted by other equestrians in the Ukraine or the United States. The record contains no evidence showing the extent of the petitioner's influence on other riders nationally or internationally, nor does it show that the field has somehow changed as a result of his work. While the petitioner may have improved the skills of riders under his direct tutelage, this does not demonstrate original contributions of major significance in the field consistent with sustained national or international acclaim.

Affidavits from one's employers and personal contacts, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an **alien's eligibility for the benefit sought**. *Id.* **The submission of affidavits from the petitioner's past acquaintances is not presumptive evidence of eligibility; CIS may evaluate the content of those affidavits as to whether they support the alien's eligibility.** *See id.* at 795. Thus, the content of the affiants' statements and how they became aware of the petitioner's reputation are important considerations. Even when executed by independent experts, affidavits solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a performing artist or an equestrian who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner submitted affidavits, photographs, promotional material, and other documentation indicating that he performed as an ensemble member of the Cherkasy Folk Choir. On appeal, the petitioner submits a promotional flyer entitled "Back from Ukraine . . . by Popular Demand!!! Cherkasski Cossacks. A dance and Song Spectacular from Ukraine." The opposite side of the flyer lists the 1992 United States tour schedule for

the troupe indicating that its performance venues included two church halls, Ukrainian Cultural Centers in New Jersey and Pennsylvania, an Ohio community college, a Pennsylvania library, several high school auditoriums, and a junior high school auditorium.

As discussed previously, the petitioner submitted digital video showing his participation in riding shows in Drabiv and Chyhyryn. In response to the director's request for evidence, the petitioner submitted a letter from counsel stating:

The C.D. shows [the petitioner] performing at a major horse show in the city of Drabiv. The show is at a new hippodrome with an audience of 10,000 people from all regions of the Ukraine. . . . On the C.D. the petitioner is also shown . . . at a major exhibition in C[h]yhyryn The President of the Ukraine was present in the audience at this exhibition.

The director concluded that the preceding evidence was sufficient to meet this regulatory criterion. The plain language of this criterion, however, indicates that it is intended for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. In the performing arts, sustained national or international acclaim is generally not established merely by performing in public, but rather by consistently attracting a substantial national or international audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x). Even if we were to accept the director's conclusion that the petitioner's horse show performances from the 1990's meet this criterion, there is no evidence that the petitioner has performed in any comparable venues since coming to the United States in 1999. As such, the petitioner has not demonstrated that his national or international acclaim has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

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 his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted affidavits and other evidence indicating that he performed as an ensemble member for the Cherkasy Folk Choir and the Cherkasy Cossacks during the 1990's. On appeal, the petitioner submits some evidence regarding the reputation of these troupes, but there is no documentation originating from an official of these organizations indicating that the petitioner's role for them was leading or critical. Nor is there evidence demonstrating how the petitioner's role differentiated him from the other performers employed by the Cherkasy Folk Choir and the Cherkasy Cossacks. For example, there is no evidence showing that the petitioner's name frequently received top billing or that the popularity of these troupes increased when the petitioner was known to be performing. As such, the petitioner has not established that he was responsible for these troupes' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

The petitioner submitted an affidavit from [REDACTED] stating that the petitioner worked for the Zaporizhia circus in Ukraine during the summers of 1993, 1994, 1995 and 1996, but there is no evidence that his role for this circus was leading or critical or that the circus had a distinguished reputation.

The petitioner submitted affidavits from [REDACTED] Director of Agricultural Enterprise "Promin," and Nikolai Dubina, who identified himself as a former Brigadier for the Agricultural Enterprise "Promin." Their statements indicate that the petitioner worked as equestrian artist, horse trainer, choreographer, riding instructor, spokesperson, and stage producer at Promin and the Jockey Group during the 1990's. Aside from the video footage submitted by the petitioner,² there is no evidence showing that Promin or the Jockey Club have distinguished reputations. According to the petitioner's government-issued "Employment Record Book" and the letter from [REDACTED] the petitioner's principal employment during the 1990's was with the Cherkasy Folk Choir rather than Promin or the Jockey Group. While the petitioner may have worked part-time for these organizations participating in their general operations and helping to coordinate their special events, the record does not demonstrate how the petitioner's role was leading or critical to these organizations or as a whole. For example, there is nothing differentiating the petitioner from the other horse trainers and riding instructors or Promin's senior managers such as its director and brigadier.

Beyond the preceding deficiencies, there is no evidence that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation since his arrival in the United States in 1999. As such, the petitioner has not demonstrated that his national or international acclaim has been sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

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

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

The petitioner submitted affidavits, promotional material, photographs, and video footage indicating that he has taken part in various performances in the 1990's. The plain language of this regulatory criterion, however, calls for evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated in various shows cannot satisfy this criterion. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim. For example, there is no indication that the petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Nor is there evidence showing, for example, that the video featuring the petitioner's performance as a member of the Cherkasy Folk Choir had a high national or international sales volume. Finally, there is no evidence that the petitioner has enjoyed commercial success in the performing arts since his arrival in the United States in 1999.

² As discussed previously, there is no objective documentary evidence to support the translator and affiants' assertion that the video footage showing the petitioner was broadcast by major media outlets to a significant national or international audience.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Further, as required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record, however, contains no evidence of achievements and recognition subsequent to the petitioner's arrival in the United States in 1999 showing that he has sustained national or international acclaim as an equestrian or a performing artist.

On appeal, counsel states: "Many of the supporting letters do not specifically address the ten criteria, and should have been considered as 'comparable evidence.'" The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence," but only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

With regard to the affidavits and letters of support submitted by the petitioner, we cannot ignore that they were limited to his circle of acquaintances. The statutory requirement that an alien have "sustained national or international acclaim," however, necessitates evidence of recognition beyond his personal contacts. While such evidence need not be in the form of letters from independent experts (the regulation at 8 C.F.R. § 204.5(h)(3) provides ten types of evidence), the opinions of close colleagues alone cannot form the cornerstone of a successful claim of national or international acclaim. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" of achievements and recognition. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i).

As previously discussed, the AAO finds that some of the claims made in the submitted affidavits are unsupported by the initial evidence that is specifically required by the regulations, despite the director's request for evidence. 8 C.F.R. § 204.5(h)(3). Where the regulations require specific, objective evidence in support of a petition, the petitioner's burden of proof is not satisfied by submitting unsupported testimony from one's personal acquaintances. 8 C.F.R. § 103.2(b)(1). The regulations governing the present immigrant visa determination have no requirement mandating that CIS specifically accept the credibility of personal testimony, even if not corroborated. The regulations provide that eligibility may be established through a one-time achievement or through documentation meeting at least three of ten criteria. The commentary for the proposed regulations implementing this statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The criteria require specific documentation beyond mere testimony, such as awards, published material about the alien, and video sales. As an example of the specific nature of the documentation required, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the "title, date and author" of the published material about the alien. The only criterion for which letters are specifically relevant is the criterion relating to the alien's leading or critical role for an entity with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). The first issue is the role the alien was

hired to fill. According to 8 C.F.R. § 204.5(g) letters from employers are acceptable evidence of experience.³ While letters and affidavits may place the evidence for other regulatory criteria in context, they cannot serve as primary evidence of the achievement required by the criterion. Further, while the regulation at 8 C.F.R. § 204.5(h)(4) permits “comparable evidence” where the ten criteria do not “readily apply” to the alien’s occupation, the regulation neither states nor implies that affidavits from the alien’s acquaintances attesting to his standing and experience in the field are “comparable” to the strict documentation requirements in the regulations setting forth the ten criteria.

Review of the record does not establish that the petitioner has distinguished himself 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.

³ We note, however, that an alien would also need to submit objective evidence of the reputation of the employer to satisfy the specific requirement of 8 C.F.R. § 204.5(h)(3)(viii).