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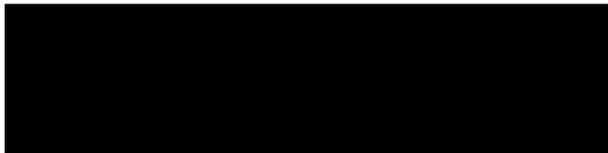


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 23 2007
EAC 05 112 51776

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.

Naura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an “alien of extraordinary ability,” 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 that he qualifies for classification as an alien of extraordinary ability.

On appeal, counsel argues that the director’s “denial fails to give proper weight” to certain evidence and ignores other evidence entirely. For the reasons discussed below, we find that the director’s decision fails to explain the deficiencies in the evidence submitted consistent with the regulations such that the petitioner could file a meaningful appeal addressing those deficiencies. The director’s decision contains errors of law and ignores or incorrectly evaluates much of the petitioner’s evidence and arguments. Thus, we must remand the matter to the director for issuance of a new request for evidence that properly addresses the deficiencies in the record. If the director concludes that the petitioner’s response to such a notice does not overcome the specified deficiencies, the director must issue a decision that applies the applicable statutory and regulatory requirements to the evidence submitted. We provide the following guidance in complying with this remand order.

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.

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, 60898-9 (November 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 are listed 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 March 10, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an "acrobat." 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.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In a March 4, 2005 letter accompanying the petition, counsel asserts that the petitioner has won major internationally recognized awards through his national championship victories in China in 1984, 1985, 1986, and 1987 and through his first place at the International Acrobatics Championship in Poland in 1986. As indicated

above, the regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). The plain language of this regulation requires major “international” recognition rather than national recognition. As such, the “national” championships won by the petitioner in China do not satisfy the plain language of the regulation. Regarding the petitioner’s first place at the International Acrobatics Championship in 1986, there is no supporting evidence showing that this event commanded substantial international recognition.

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy truly international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are “household names,” recognized immediately even among the general public as being the highest possible honors in their respective fields. In this case, there is no evidence showing, for example, that the International Acrobatics Championship in Poland was broadcast on television to a substantial international audience or that it attracted significant major media coverage at the international level (in the same manner as events such as the Summer Olympics or the World Cup of Soccer). The record does not establish that the petitioner’s first place at this acrobatics championship, which should be evaluated by the director as a lesser nationally or internationally recognized prize or award under the criterion at 8 C.F.R. § 204.5(h)(3)(i), commands international recognition comparable to the Nobel Prize. Thus, the petitioner’s evidence fails to demonstrate that he is the recipient of a major, internationally recognized award.

At the time of filing, the petitioner submitted evidence of various awards, published material about his troupe’s acrobatic accomplishments, an October 15, 2004 “Certification” from the Sichuan Province Literature and Arts Association stating that he judged four competitions during the 1990’s, and evidence of his authorship of articles pertaining to acrobatics. In the March 4, 2005 letter accompanying the petition, counsel argued that this evidence satisfies the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (iv), and (vi).

On June 7, 2005, the director issued a request for additional evidence. Specifically, the director requested evidence of the petitioner’s awards, memberships, published material about the petitioner, and his salary. The director provides no explanation for singling out these four criteria. Nothing in the regulation implies that an alien must meet any specific criterion as long as the alien meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). The director also noted that the record lacked letters “from well-known persons” in the petitioner’s field although most of the criteria require objective evidence of achievements as opposed to letters of support from recognized experts, however credible their opinions may be.

In response, the petitioner submitted additional information about his awards, testimonials from acrobatic troupes that he coached, further articles authored by him, and evidence of his salary. The petitioner’s response also included an August 31, 2005 letter from counsel requesting that the recommendation letters submitted in the petitioner’s behalf be considered as “other comparable evidence of extraordinary ability.” 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. Of the ten criteria, counsel has argued that at least five readily apply to the petitioner's occupation.¹ Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation does not allow for the submission of comparable evidence.

In the November 2, 2005 decision denying the petition, the director listed all ten of the regulatory criteria, but only discussed awards, salary, and membership, a criterion not addressed by the petitioner. The director acknowledged that the petitioner based his eligibility claim on his awards but concluded that he had not demonstrated whether the awards were individual or "as a member." Nothing in the regulation at 8 C.F.R. § 204.5(h)(3)(i) precludes team awards. Further, as noted by counsel, a number of the awards submitted by the petitioner were individual awards, not team awards. As such, the director's focus on that issue was in error. The director also stated that the petitioner had not submitted "objective evidence, such as affidavits from well-known U.S. organizations or individuals, to support your claims of prestige and ability." While affidavits may serve as valid evidence, they are far more subjective than objective. Evidence that addresses the regulatory criteria, such as awards and independent journalistic coverage of the alien, is far more persuasive than the subjective opinions of experts in the field. Thus, the implication that expert letters from U.S. sources are required to establish eligibility under this classification is in error. Finally, the director's decision included no discussion of the evidence submitted for the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), (iv), and (vi).

Beyond the decision of the director, section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3) require the petitioner to demonstrate that his national or international acclaim has been *sustained*. The record, however, includes no evidence showing that the petitioner has competed as an acrobat subsequent to May 2002. There is no evidence showing that the petitioner, age 34 at the time of filing, remains active at the national or international level as a competitive acrobat. The director's decision failed to address this deficiency.

Further, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record includes no such evidence. Counsel states that the petitioner was employed as a coach of the Chongqin Acrobatics Troupe from 1996 to 1998 and as a coach of the Yun-nan Province Acrobatics Troupe from 1998 to 2000. A July 5, 2005 letter from the Hunan Province Acrobatics Troupe states that this organization employed the petitioner from 2000 to 2004. The record, however, does not include clear evidence showing that the petitioner intends to work as a coach in the United States. The director's decision failed to address this deficiency.

Assuming that the petitioner does intend to work as an acrobatics coach in this country, he must show that he has sustained national or international acclaim based on his achievements as a coach rather than his prior

¹ Counsel has argued that the petitioner's evidence meets the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (iv), (vi), and (ix).

reputation as a competitive acrobat. While a competitive acrobat and a coach certainly share knowledge of acrobatics, the two rely on very different sets of basic skills. Thus, competitive acrobatics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Thus, if the petitioner intends to work as an acrobatics coach in the United States, he must demonstrate sustained national or international acclaim as a coach. The director's decision, however, does not address this issue.

In this matter, we find that the director's decision failed to explain the deficiencies in the evidence submitted consistent with the regulations such that the petitioner could file a meaningful appeal addressing those deficiencies. Thus, while we agree with the director that the petitioner has not demonstrated eligibility pursuant to section 203(b)(1)(A) of the Act, we must remand the matter to the director for issuance of a new request for evidence notice that properly addresses the deficiencies in the record. The director should request the following:

1. **Originals of all award certificates submitted in support of the petition.** Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), CIS has the discretion to request the originals of any photocopies submitted.
2. Primary evidence of the petitioner's 1984, 1985, 1986, and 1987 "National Champion" awards and his "1st Place" award from the International Acrobatics Championship in Poland in 1986. Presently the record includes only an October 8, 2004 certification from the Sichuan Sports Technical Institute attesting to their existence. Contemporaneous evidence of the petitioner's actual award from each of the preceding competitions is of far greater probative value than an October 8, 2004 certification issued almost two decades after these competitions allegedly took place.
3. The complete address and telephone number through which the Sichuan Sports Technical Institute may be contacted.
4. Circulation statistics or other evidence showing that the publications that have covered the petitioner or his acrobatics troupes had significant national distribution to the extent that they would qualify as major media.
5. The complete address and telephone number through which the Sichuan Province Literature and Arts Association may be contacted.² The petitioner should also submit evidence showing the names of the individuals he judged and their level of expertise. Contemporaneous evidence of the petitioner's participation as a judge at each competition is of far greater probative value

² The petitioner submitted an October 15, 2004 "Certification" from the Sichuan Province Literature and Arts Association stating that he judged four competitions during the 1990's.

- than an October 15, 2004 "Certification" issued several years after these competitions allegedly took place.
6. *Original* issues of the publications that featured articles authored by the petitioner submitted in support of the petition. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), CIS has the discretion to request the originals of any photocopies submitted.
 7. Circulation statistics or other evidence showing that the publications featuring articles authored by the petitioner had significant national distribution to the extent that they would qualify as major media.
 8. National salary statistics from an official source showing that the petitioner's compensation was significantly high in relation to others in his field.
 9. Clear evidence that the petitioner is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States.
 10. If the petitioner intends to work as a coach in the United States, he must submit evidence showing that his national acclaim as a coach has been *sustained*. The record, however, includes no evidence showing that acrobats coached by the petitioner have won nationally or internationally recognized awards subsequent to 1998.
 11. If the petitioner intends to work as an acrobat in the United States, he must submit evidence showing that his national acclaim as an acrobat has been *sustained*. The record, however, includes no evidence showing that the petitioner has competed for awards subsequent to May 2002.

The director may request any additional evidence deemed warranted. Pursuant to 8 C.F.R. § 103.2(b)(12) and *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971), any evidence submitted by the petitioner in response to the director's request must demonstrate his eligibility at the time of filing (March 10, 2005). If the director concludes that the petitioner's response does not overcome the deficiencies in the record, the director shall issue a decision that addresses all of the petitioner's evidence and that applies the pertinent statutory and regulatory requirements in the analysis of the evidence.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and seeks continue work in his area of expertise in the United States. The evidence of record does not establish that the petitioner meets these requirements.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.