



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

B2

FILE:

Office: NEBRASKA SERVICE CENTER

Date: **MAY 27 2008**

LIN 06 142 50624

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and 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 as a circus performer and an illusionist. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also determined the petitioner had not submitted clear evidence that she would continue work in her area of expertise in the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that she “will continue work in her field upon admission to permanent residence.”

On January 16, 2008, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information concerning inconsistencies in the record and deficiencies in her evidence. The notice specifically observed that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that “this petition and the evidence submitted with it are all true and correct.”

Regarding the inconsistencies in the record and the deficiencies in the evidence, the AAO’s notice stated:

In support of the petition, you submitted a January 6, 1999 letter from _____ Director and Artistic Manager, Center of Exentrics, Moscow, stating:

Variety Shows & Concerts Department of the city of Moscow “CENTER OF EXENTRICS.” named after _____ y presents the show “Illusion with transformation,” performed by actors _____ va and _____

These creative actors come of a circus family and have been involved in the circus arts since their childhood, taking part in various circus numbers. After starting a family they’ve decided to create their own circus number.

This circus number has turned out very interesting; practically each illusion trick is being accompanied by the change of clothes and this is always well perceived by spectators.

These actors are young, interesting, artistic and have a great future.

This letter refers to a future circus show to be given by you in Moscow, but it is dated January 6, 1999, which is long after your February 11, 1997 arrival date in the United States.¹ There is no evidence (such as an entry stamp in your passport) that you were physically present in Moscow, Russia in 1999 and performing in the show “Illusion with transformation” as an actress for the Center

¹ Part 3 of your Form I-140 petition and Part 3 your Form I-485, Application to Register Permanent Residence or Adjust Status, list your date of arrival in the United States as February 11, 1997. More specifically, your Form I-485 identifies this date as your “Last Entry Into the United States.”

of Exentrics. According to your Form G-325A you were residing in Brooklyn, NY rather than Russia at that time. In fact, a January 10, 2000 letter from counsel submitted in support of an H-1B petition filed in your behalf by Central Sports, Inc. states: "[REDACTED] was employed by the Arthur Ducker Agency as a performer and public relations manager from December 1998 to December 1999." Counsel's claim that you were working for the Arthur Ducker Agency in 1999 contradicts the information in the January 6, 1999 letter from [REDACTED] regarding your 1999 circus show at the Center of Exentrics in Moscow. Please submit independent and objective evidence addressing this inconsistency.

The January 6, 1999 letter from E [REDACTED] n and the letter you submitted from [REDACTED] v contain an additional inconsistency. Both letters refer to you and [REDACTED] as "starting a family" together. This statement conflicts with information provided by you on your Form G-325A indicating that you have no prior husbands and information on your Form I-485 indicating that you have no children. Please submit evidence addressing [REDACTED] n and [REDACTED] s reference to your "starting a family" with [REDACTED]

In the June 22, 2006 letter responding to the director's notice of intent to deny, counsel states: "In addition there is 'comparable evidence' of [REDACTED] s extraordinary ability. . . . [REDACTED] is also a graduate of the State Institute of the Circus and Variety Arts." The record contains photocopies of your diploma from the State Institute of the Circus and Variety Arts, a transcript supplementing the diploma, and an academic evaluation from the Trustforte Corporation.

Your diploma from the State Institute of the Circus and Variety Arts states:

The present Diploma has been issued to [REDACTED] who was admitted to the State Institute of the Circus and Variety Arts . . . in the year 1989 and completed the full course of the said Institute in the year 1993

In accordance with the decision of the State Examining Board, dated May 26, 1993[,] she was awarded the qualification

The academic evaluation from Trustforte Corporation states:

Enrollment in State Institute of the Circus and Variety Arts is based on graduation from high school and competitive entrance examinations; the University is an accredited institution of higher education in Russia. [REDACTED] entered the University in 1989 and she completed the required academic coursework and examinations in 1993 and was awarded a Diploma. The diploma is evidence that she completed her course of studies at the University.

The record reflects that you were born on June 9, 1979. According to the preceding information, you graduated from high school at the age of nine or ten and earned the U.S. equivalent of a bachelor's of arts degree on May 26, 1993 at the age of thirteen. Please submit original documentation from your high school and the State Institute of the Circus and Variety Arts confirming your graduation from both of these institutions at such an unusually young age.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was also requested to submit originals of the following:

1. "Commendation Letter" issued to the petitioner by the mayor of the city of Rostov-on-Don.
2. "Rosgocirk [Russian State Circus] Participant's Diploma" stating: "ARTISTS [the petitioner] AND S. MOLNER ARE PRESENTED WITH AN AWARD FOR THEIR ACT 'ILLUSION WITH TRANSFORMATION,' FOR ORIGINALITY AND HIGH ARTISTIC ACHIEVEMENTS."
3. Award naming the petitioner a laureate of the "All-Russian Circus Art Competition in the City of Yaroslavl."²
4. The January 6, 1999 letter from [REDACTED] Director and Artistic Manager, Center of Exentrics, Moscow.
5. The letter the petitioner submitted from [REDACTED]
6. The petitioner's diploma from the State Institute of the Circus and Variety Arts (Number 69991).
7. The petitioner's official course transcript from the State Institute of the Circus and Variety Arts.
8. The petitioner's high school diploma and official course transcript.

In accordance with the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded 30 days (plus 3 days for mailing) in which to respond to the AAO's notice.

In response, the petitioner submitted a February 15, 2008 letter from counsel requesting a "60 day extension to submit original documents" from overseas. Counsel stated that the requested originals would be submitted to the AAO "on or before April 17, 2008." The petitioner's request for an additional 60 days in which to respond was granted. The petitioner, however, failed to submit the requested originals and documentation addressing the derogatory information by the specified date.

Regarding the petitioner's failure to submit the requested original documents, the regulation at 8 C.F.R. § 103.2(b)(5) provides: "Failure to submit the requested original document by the deadline may result in denial or revocation of the underlying application or benefit." Further, the regulation at 8 C.F.R. § 103.2(b)(14) provides: "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition." Accordingly, this petition cannot be approved. In addition, the petitioner's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and her remaining documentation. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and

² The petitioner submitted a letter from [REDACTED] General Manager, Nikulin's Moscow Circus on Zvetnoy Boulevard, Moscow, stating that the petitioner and her partner "became laureates of All-Russian Circus Art Competition in the City of Yaroslavl."

sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Finally, even if the petitioner had submitted originals, the petition could not be approved because the petitioner failed to establish eligibility for the requested classification.

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 she has sustained national or international acclaim at the very top level.

This petition, filed on April 10, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a circus performer and illusionist. According to her Form G-325A, Biographic Information, and three Form I-129 petitions filed in her behalf by Central Sports, Inc., the petitioner has been working as a public relations specialist for the company since April 2000. The record contains no evidence showing that the petitioner has worked as a circus performer or illusionist subsequent to her arrival in the United States in February 1997. This issue will be further addressed below.

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 what is alleged to be a “COMMENDATION LETTER” issued to her by the mayor of the city of Rostov-on-Don. An accompanying English language translation of the commendation letter states: “TO [the petitioner] AND S. MOLNER FOR OUTSTANDING WORK AND CREATIVE ACTIVITIES BENEFITTING THEIR HOME CITY.” This commendation letter reflects local recognition rather than national or international recognition.

The petitioner also submitted what is alleged to be a “ROSGOSCIRK [RUSSIAN STATE CIRCUS] PARTICIPANT’S DIPLOMA” presented to her bearing the signature of the president of that organization. An accompanying English language translation of the participant’s diploma states: “ARTISTS [the petitioner] AND S. MOLNER ARE PRESENTED WITH AN AWARD FOR THEIR ACT ‘ILLUSION WITH TRANSFORMATION,’ FOR ORIGINALITY AND HIGH ARTISTIC ACHIEVEMENTS.” The record includes no further evidence regarding the significance of this participant’s diploma. There is no evidence showing that this diploma is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner’s participation in a show. In response to the director’s May 24, 2006 notice of intent to deny, the petitioner submitted a January 25, 2005 article posted online at <http://www.tonight.co.za> stating: “Rosgocirk is the body that today controls the circus all over Russia. Over 3,500 performers are employed in 50 buildings throughout Russia.” While the petitioner submitted evidence that Rosgocirk is the governing organization for circuses in Russia and employed “over 3,500 performers” as of 2005, there is no evidence establishing that the participant’s diploma, allegedly issued to the petitioner by Rosgocirk in the 1990s, is a nationally or internationally recognized award for excellence.³ The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* and it is her burden to establish every element of a given criterion. In this instance, the extent to which the petitioner’s participant’s diploma is recognized has not been established. For example, there is no evidence of national press coverage surrounding the petitioner’s receipt of this diploma or other evidence showing that it commands a significant level of recognition.

The petitioner also submitted a letter from [REDACTED], General Manager, Nikulin’s Moscow Circus on Zvetnoy Boulevard, Moscow, stating that the petitioner and her partner “became laureates of All-Russian Circus Art Competition in the City of Yaroslavl.” Rather than submitting primary evidence of her receipt of an award at the aforementioned competition, the petitioner instead submitted a letter from her former employer

³ Not every award issued by a national organization is a nationally or internationally recognized award for excellence in the field. For example, Boy Scouts of America is a national organization, but not every award bestowed by this organization is a nationally recognized award for excellence.

attesting to its existence. The plain language of this criterion, however, requires documentation of the petitioner's receipt of the actual prize or award. The record lacks documentation issued by the presenting organization to the petitioner demonstrating her receipt of the preceding award. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

As discussed previously, on January 16, 2008, this office issued a notice requesting the petitioner to submit the originals of the preceding awards. The petitioner failed to submit the requested documentation. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner's failure to comply with the AAO's request for the originals of these awards constitutes grounds for denial of the petition.

Beyond the preceding deficiencies, the statute and regulations require the petitioner's national or international acclaim as a 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). We cannot ignore that the above awards were allegedly received by the petitioner more than nine years before this petition was filed and therefore they are not an indication that her national or international acclaim as performer has been sustained.

In light of the above, the petitioner has not established that she 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 four letters of support, but none of these letters address any of the petitioner's contributions or activities subsequent to the 1990s.

A letter from Riga Circus in the Republic of Latvia states:

The circus artists [the petitioner] and [redacted] performed in Riga Circus with their act "Illusion with Transformation" from January 18 to February 20, 1996.

The artists presented an unusual act with original illusion tricks and costumes' transformation.

The performers are young, creative and competent. The act performed by [the petitioner] and Sergey Molner was enthusiastically and warmly received by Riga Circus audience.

The letter from [redacted] states:

The performers [the petitioner] and [redacted] has [sic] worked in Nikulin's Moscow Circus on Zvetnoy Blvd. from April 3, 1996 through May 30, 1996. Their act was called "Illusion with Transformation."

The performers created an unusual act involving transformation of costumes with original illusion tricks. The audience always warmly received their performances.

This act was first presented by the performers in the Bolshoy Moscow Circus on Leninsky Gorky and was subsequently shown in Voronezh, Chelyabinsk and other Russian cities and . . . countries.

The performers became laureates of All-Russian Circus Art Competition in the City of Yaroslavl.

Based on the above accomplishments, the above-named performers shall be considered an essential part of the Golden Fund of the Russian Circus.

On appeal, counsel states: “[The petitioner] submitted evidence of high artistic contribution in her field by presenting USCIS with a copy of a letter from Nikulin’s Moscow Circus signed by the general manager. The letter contained specific and detailed information regarding the alien’s contributions of major significance.” In regard to [REDACTED]’s statement that the petitioner and her partner “became laureates of All-Russian Circus Art Competition in the City of Yaroslavl,” counsel states that this award proved “first hand the [petitioner’s] impact with sufficient documentary evidence.” The record, however, includes no evidence of the petitioner’s receipt of an award from the “All-Russian Circus Art Competition in the City of Yaroslavl.” Moreover, the petitioner’s awards have already been addressed under the 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. While the petitioner’s “Illusion with Transformation” act may have been original, there is no evidence to demonstrate that it qualifies as a contribution of major significance in her field. For example, the record does not indicate the extent of the petitioner’s influence on other circus performers nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

An undated letter from [REDACTED], General Manager, Circus-Service, Moscow, states:

The Limited Liability Company “Circus-Service” presents the performers [the petitioner] and Sergey Molner with their act “Illusion with Transformation.”

[The petitioner] came from circus family, performed in circus since childhood, often participated in children’s circus shows, going on tours with her parents to Russian cities and . . . countries.

[REDACTED]’s circus life started as an equilibrist with the act “Flying Aces” under the guidance of [REDACTED]. Mr. [REDACTED] had been doing the most difficult equilibrium tricks. This act won recognition at various respected circus competitions.

After starting a family, the performers decided to create their own act “Illusion with Transformation,” which received a prize at All-Russian Circus Art Competition.

This act is well received by the audience in Russia and abroad.

A January 6, 1999 letter from [REDACTED], Director and Artistic Manager, Center of Exentrics, Moscow, states:

Variety Shows & Concerts Department of the city of Moscow "CENTER OF EXENTRICS," named after [REDACTED] presents the show "Illusion with transformation," performed by actors [the petitioner] and S. Molner.

These creative actors come of a circus family and have been involved in the circus arts since their childhood, taking part in various circus numbers. After starting a family they've decided to create their own circus number.

This circus number has turned out very interesting; practically each illusion trick is being accompanied by the change of clothes and this is always well perceived by spectators.

These actors are young, interesting, artistic and have a great future.

In addressing this letter, the director's decision stated: "This document apparently refers to a future performance but is dated January 6, 1999, which is after the petitioner's arrival date in the U.S. as listed on the petition." Counsel does not address this discrepancy on appeal. As stated previously, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The January 6, 1999 letter from E.I. Sorkin and the letter from [REDACTED] contain an additional inconsistency not addressed by the director. Both letters refer to the petitioner and [REDACTED] as "starting a family" together. This statement contradicts information provided by the petitioner on her Form G-325A indicating that she has no prior husbands and information on her Form I-485, Application to Register Permanent Residence or Adjust Status, indicating that she has no children. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

As discussed previously, on January 16, 2008, this office issued a notice requesting the petitioner to submit the originals of the preceding letters from [REDACTED] and [REDACTED]. The petitioner failed to submit the requested documentation. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner's failure to comply with the AAO's request for the originals of these letters constitutes grounds for denial of the petition.

The preceding letters briefly discuss one of the petitioner's circus acts, "Illusion with Transformation," but there is nothing in the record to establish that petitioner has made original contributions of major significance in her field. In general, the opinions of experts in the field, 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 (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. Without substantive evidence showing the petitioner has made original contributions of major significance in her field, we cannot conclude that she meets this criterion.

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 she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted letters indicating that she has performed for the Center of Exentrics and Circus-Service, but the record contains no evidence showing that these organizations had distinguished reputations.

The letter from Riga Circus in the Republic of Latvia states that “[the petitioner] and Sergey Molner performed in Riga Circus with their act ‘Illusion with Transformation’ from January 18 to February 20, 1996.” As evidence of Riga Circus’ distinguished reputation, the petitioner submitted information printed from its internet site on June 22, 2006. The self-serving nature of this documentation is not adequate to demonstrate that the Riga Circus has a distinguished reputation. Nor is there evidence that the circus had a distinguished reputation during the brief five-week period in which the petitioner allegedly performed in 1996.

The letter from _____ states that “[the petitioner] and Sergey Molner . . . worked in Nikulin’s Moscow Circus on Zvetnoy Blvd. from April 3, 1996 through May 30, 1996.” As evidence of Nikulin’s Moscow Circus’ distinguished reputation, the petitioner submitted information printed from the “MOSCOW-TAXI.COM” internet site on June 22, 2006 stating:

The circus tradition developed quickly in Moscow and today the Russian capital boasts two main circuses, the Old and original Circus on Tsvetnoy Boulevard, now renamed the Yury Nikulin Circus, and the New Moscow State Circus on Prospect Vernadskovo.

The Yury Nikulin Circus or Old Circus, named after Russia’s most famous clown and the former longtime director of the circus, is in some ways returning to its traditional roots today and is featuring more and more of the clown acts and tomfoolery that became popular during the 17th and 18th centuries in Russia. The circus also features an excellent range of acrobatic and gymnastics acts, and performances featuring bears, horses, monkeys and dogs.

The limited information from Moscow Taxi’s internet site does not mention the petitioner’s specialty, illusionist acts. Nor is there evidence that this circus had a distinguished reputation during the brief two-month period in which the petitioner allegedly performed in 1996.

In order to demonstrate that she performed in a leading or critical role for the preceding organizations, the petitioner must distinguish herself from the numerous other artists employed by these circuses. Otherwise, the phrase “leading or critical role” is meaningless. For example, the record contains no evidence that the shows in which the petitioner performed were promoted with the petitioner’s name receiving top billing or that their

popularity increased when the petitioner was known to be performing. The evidence submitted by the petitioner does not indicate that her role was more important or notable than that of the other performers working for the preceding circuses.

In light of the above, the petitioner has not established that the circuses for which she worked had distinguished reputations during her employment and that she was responsible for their success or standing to a degree consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim. Thus, the petitioner has not established that she 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.

In her June 22, 2006 letter responding to the director’s notice of intent to deny, counsel states: “Renowned circuses where [the petitioner] had the opportunity to perform had significantly increased sales during her performance period.” The record, however, includes no evidence to support this assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). This regulatory criterion calls for commercial success in the form of “sales” or “receipts”; simply submitting letters of support stating that the petitioner performed an illusionist act cannot meet the plain language of this criterion. The record includes no evidence of documented sales, receipts, or other similar evidence showing, for example, that the petitioner’s performances drew record crowds, were regular sell-out performances, resulted in greater audiences than other similar performances that did not feature the petitioner, or that she otherwise achieved commercial success in a manner consistent with sustained national or international acclaim. Thus, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Further, as discussed previously, the statute and regulations require the petitioner to demonstrate that her 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). According to Part 3 of the Form I-140 petition and other documentation submitted by the petitioner, she has been residing in the United States since February 1997. The record, however, includes no evidence of achievements or recognition (during the nine years immediately preceding the filing of the petition) showing that the petitioner has sustained national or international acclaim as a circus performer or illusionist since her arrival in the United States. In addressing this issue, the director’s decision stated:

[T]he Service notes that the petitioner has been working in H-1B status for Central Sports Inc. as a public relations specialist since April 2000. The [extraordinary ability immigrant] classification is employment-based, and an alien seeking this classification must . . . intend to pursue work in the field of endeavor in which [he] or she claims extraordinary ability. Even had the petitioner established that she achieved a level of acclaim in Russia . . . , the record contains no evidence to establish that she has sustained any such acclaim in the more than nine years since she entered the United States.

We concur with the director’s findings. On appeal, counsel addresses these findings by stating: “Appellant has been making guest appearances at various reputable forums since arriving to [sic] the US. She has been

making guest appearances at various well [sic] known Cabarets in Brooklyn, NY. She also continues to maintain her day job where she utilizes her skills in perfuming [sic] her duties.” Counsel fails to specifically identify the “reputable forums” where the petitioner has performed, nor is there evidence that her primary duties as a public relations specialist for Central Sports, Inc. require the skills of a circus illusionist. More significantly, there is no evidence documenting any of the petitioner’s performances since her entry into the United States. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. Subsequent to 1997, there is no evidence that the petitioner has demonstrated sustained national or international acclaim in her field.

In the June 22, 2006 letter responding to the director’s notice of intent to deny, counsel asserts that the petitioner’s circus performances and graduation from the State Institute of the Circus and Variety Arts should be evaluated as “comparable evidence” pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The record, however, includes no evidence showing that the petitioner’s circus performances or graduation were consistent with sustained national or international acclaim at the very top of her field. Moreover, the deficiencies in the evidence relating to the petitioner’s performances have already been addressed under the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(v), (viii), and (x). With regard to the petitioner’s graduation from the State Institute of the Circus and Variety Arts, the AAO issued a notice requesting the petitioner to submit her original diploma and official course transcript from this institution. The petitioner failed to submit the requested documentation. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner’s failure to comply with the AAO’s request for the originals of the preceding documents constitutes grounds for denial of the petition.

Regardless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” 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 the regulatory 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.

The director also found that there was “no evidence of how [the petitioner] will continue to work in her claimed field of expertise.” We concur with the director’s finding. 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.

In conclusion, review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a national or international level. Nor is there clear evidence that the petitioner will continue work in the United States as a circus performer and

illusionist. 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.