



U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

B2

File: [REDACTED] Office: California Service Center Date: AUG 9 2000

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)

Public Copy

IN BEHALF OF PETITIONER:

[REDACTED]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations 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 trapeze artist. The director determined the petitioner had not established that he has earned sustained national or international acclaim.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). These 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.

The petitioner is a member of the [REDACTED] a Russian ensemble of trapeze artists. The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. The petitioner has submitted evidence which, he claims, meets 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.

Counsel contends that the petitioner's group, [REDACTED] received the [REDACTED] award from [REDACTED] of Monaco. The only evidence offered in support of this statement is an untranslated certificate from the [REDACTED] Monte Carlo, which reads [REDACTED] (RUSSIE) / Trapezes volants / [REDACTED]. While the photocopied certificate in the record shows the signature of [REDACTED] it cannot be determined whether the signature is original or a facsimile. The presence of the monarch's name on the certificate does not inherently demonstrate the significance of the award.

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

Counsel states:

The [REDACTED] were the first to break the four-minute mile of the trapeze: the quintuple aerial somersault. See Article entitled "Daring the Impossible," attached as Exhibit 2. . . . Through hard work and determination, coupled with extraordinary athletic ability, the [REDACTED] accomplished the quintuple somersault and assured their place in circus history. [The petitioner] is an integral member of this history making and unique group.

The cited article is only partially legible, due to image degradation from several generations of photocopying. The legible portions of the article do not show that any member of the [REDACTED] has successfully executed a quintuple somersault. The article does indicate that the Flying Cranes are one of only two acts to consistently achieve the quadruple somersault, and it describes the quintuple somersault as "a feat never achieved - and scarcely imagined - in the 131-year history of the trapeze." This same article identifies [REDACTED] as the acrobat who actually executed a quadruple somersault and unsuccessfully attempted a quintuple. The petitioner is not mentioned in the article and cannot be credited with the achievements of other members of the group; the regulation calls for "the alien's original . . . contributions," rather than contributions by the alien's associates. It is clear from the article that the [REDACTED] did not succeed in their attempt to master the quintuple somersault, and counsel's claim to the contrary is demonstrably false.

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

Counsel states that the petitioner's performances with the Moscow Circus satisfy this criterion. It appears, however, that the criterion was meant to apply to visual artists such as painters and sculptors. Every artist or athlete who performs before an audience is on "display," and thus public appearances in and of themselves do not distinguish extraordinary performers from others in the field. Public performances are covered under a separate criterion, below.

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

The record indicates that the [REDACTED] have toured extensively as a featured act with the world-famous [REDACTED] Circus. While the record shows that the circus has performed at such major venues as New York's Madison Square Garden, the record contains no specific figures regarding the circus' commercial success or any indication of the [REDACTED] responsibility for that success (although many reviews single out the trapeze ensemble for special mention).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel observes that the [REDACTED] Circus and the [REDACTED] in Las Vegas, Nevada, are distinguished establishments. Counsel contends that the petitioner has played a key role by performing for these entities.

Newspaper articles in the record demonstrate that the [REDACTED] Circus (some articles call it the [REDACTED] Circus) is well known and highly regarded. Some of these articles mention the [REDACTED] along with other acts.

While the [REDACTED] as a group, perform an important function as one of the most popular acts in a given show, it does not follow that each individual member plays a leading or critical role; such a finding would make the term "leading or critical" meaningless.

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

The initial evidence focuses not on the petitioner, but on the [REDACTED] as a group, the implication being that every member of the [REDACTED] is an alien of extraordinary ability. The only evidence that the petitioner is even a member of the group is a contract from 1997.

The director requested further evidence, stating that the initial submission does not establish the petitioner's eligibility. The petitioner's response consists only of a letter from counsel, who

again argues that the petitioner "is a member of the [redacted] generally regarded as the best trapeze act in the world today."

The record indicates that the [redacted] as a group, are a renowned performing ensemble, deemed by some to be among the world's greatest trapeze acts. Nevertheless, the director denied the petition because the petitioner had not demonstrated that he, as an individual, was widely acclaimed or renowned as being at the top of his field.

On appeal, counsel asserts that the petitioner "is a key performer" in the [redacted] although the record does not even contain statements from other members of the [redacted] to support this assertion. The appeal includes evidence pertaining to the petitioner's education, which is of minimal consequence because an individual does not earn acclaim simply by attending a particular school.

The petitioner submits evidence of prizes he received in the late 1980s, nearly a decade before he filed the petition, but which for some reason he did not choose to mention or document anywhere in his initial petition.

The petitioner submits documentation showing that he won the [redacted] Prize in 1988 [redacted] Vice Consul for Science and Education at the [redacted] San Francisco, California, states that this "very important" prize "was awarded to the most talented, gifted people in the Soviet Union who achieved outstanding achievements in science, culture, sport and artistic fields." Other documentation shows that the petitioner won a [redacted] at the [redacted] Festival in 1987. The significance of the Chinese award is not clear. At the [redacted] (Korea) Festival in 1989, the petitioner received an "Art Diploma . . . awarded in recognition of contribution to making the 13th [redacted] an artistic success." From the diploma's wording, it is not clear that this document recognizes any special achievement beyond simply participating in the festival. Even if the petitioner's prizes constitute significant national awards, these awards would satisfy only one criterion.

Two witness letters accompany the appeal. Olympic gold medalist [redacted] states "[i]n my professional opinion [the petitioner] possesses an unusual acrobatic ability and other specialty talents . . . which makes him a unique sportsman and performer." [redacted] endorses the petitioner's talent, but does not assert that the petitioner is among the most acclaimed acrobatic gymnasts. As an Olympic champion, [redacted] himself has attained a demonstrably greater level of acclaim than the petitioner.

[redacted] former champion gymnast and now coach for the renowned [redacted] states that the beneficiary "demonstrates an

exceptional knowledge of gymnastic and acrobatic techniques and distinguishes himself as one of the best gymnast-catchers in his business in the US." As in [REDACTED] case, [REDACTED] himself appears to have enjoyed a greater degree of consistent success than the petitioner, and his subjective opinion of the petitioner's acrobatic skills, while not wholly without weight, cannot establish that the petitioner has enjoyed sustained national or international acclaim as an individual at the top of his field. The regulations establish objective criteria, in part to ensure that a decision of eligibility rests on the existence of definitive evidence, rather than on a petitioner's ability to locate friendly witnesses.

The petitioner, on appeal, has shown that he won some awards in the late 1980s and that prominent gymnasts in Las Vegas, Nevada, respect his abilities as an acrobat. The petitioner has not shown, however, that he as an individual has won lasting acclaim at a national or international level because of those skills. Membership in a well-known group of acrobats cannot suffice in this regard; otherwise, a new member of the [REDACTED] who had not participated in the troupe's rise to recognition would hypothetically become eligible immediately upon joining the ensemble. Review of the regulations plainly rules out this type of automatic eligibility.

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 that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a trapeze artist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a trapeze artist, and that he belongs to a group which is collectively well-known, but is not persuasive that the petitioner's achievements set him, as an individual, significantly above others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.