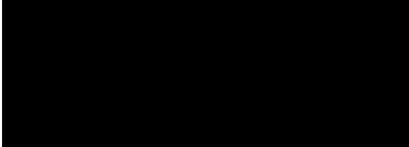




U.S. Department of Justice

Immigration and Naturalization Service

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



B2

File: EAC 99 148 51490 Office: Vermont Service Center Date: NOV 27 2000

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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data needed 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

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

NOV 27 2000 01 13 13 13

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 in the arts. 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.

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). 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 seeks to classify the petitioner as an alien with extraordinary ability as a theatrical costume designer. 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 petitioner has submitted evidence which, she 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.*

M.T. Madkova of the Russian Center of the International Association of Theaters for Children and Youth states "[t]he Judges panel of festival 'Classics on the stage of Youth Theater' had awarded the 1<sup>st</sup> place to play 'Romeo and Juliette [sic]' by W. Shakespeare (Theater 'Molodezhny', city of Sovetsk) in nomination for 'Best Costume Artist'." The record contains no evidence from the awarding entity or any other source to establish the significance of this prize. There is no clear indication that the prize is, in fact, recognized nationally or internationally, and indeed the record contains no direct documentation of the prize, but rather only a witness' reference to it.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner documents her membership in the Union of Theater Activists of the Russian Federation. While the petitioner submits a copy of the union's bylaws, the record contains no translation of this document. Therefore, it is not possible to determine what specific requirements one must meet in order to become a member of the union. If the organization is essentially a trade union, then it is not at all apparent that membership requires outstanding achievements. The same applies to the petitioner's membership in the Theater of Young Viewers Artists Union.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The petitioner submits a copy of an article from Vecherniy New York. The petitioner submits only a partial translation, and therefore it is impossible to tell how much of the article pertains to the petitioner. Furthermore, the publication, from its title, appears to be based in New York, although it is printed in the Russian language. This publication appears to be a local newspaper for the Russian community in New York, rather than a major national or international publication.

Six of the petitioner's sketches appeared in the Russian magazine Theater, along with a brief, untranslated caption. It is not clear in what context these sketches appeared (e.g., as part of a larger article about the petitioner or about costume designers in general).

*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.*

██████████ head director of Theater Tsarytsyno, states:

The opinion of this fine professional artist many times had significant and decisive role in evaluation of the work of other theater artists, working on the stage of our theater. Her fine taste, intuition and extensive experience are the definite criteria of the authority of her artistic evaluations.

The above statement indicates that the petitioner acted as a kind of advisor or consultant, rather than in a formal judging capacity. In describing an award the petitioner had received, another witness had referred to "[t]he Judges panel." It is this type of activity that the regulation contemplates. One does not satisfy this criterion simply by being asked for an expert opinion regarding the work of others in the field.

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

Several witness letters accompany the petition. Theater critic ██████████ chief expert of stage settings for the State Committee of Union of Theater Activists, Russian Federation, states:

The costumes of [the petitioner] always stand out with the high level of professionalism and a fine artistic taste, knowledge of theater and societal costume history, highest technological knowledge of how to practically explore the most innovative ideas.

Director ██████████ ██████████, president of the Russian Center of the International Association of Theatre for Children and Young People, states:

[The petitioner] is an original, fruitfully working craftsman in the field of theater costumes. Some plays, in which she created the costumes, participated in the International festivals and contests. . . .

The bright talent of [the petitioner] finds various, special means of artistic creativity and image. This partially

explains [the] successful fate of these plays, in which she participated.

Professor [REDACTED] artistic director of Theater Leadership and Theater Union, states:

[The petitioner] worked with the outstanding individuals and showed herself as a great artist in various aspects of theater and visual art. She participated in creation of memorable and visually outstanding expositions for the unique Museum of Theater Arts named after M. Bakhrushin.

Yuriy Labetsky, artistic supervisor of the Holy Fort State Puppet Theater, states:

The cultural environment of plays and psychological traits of characters are of great importance for [the petitioner] and that determines the success of her work. The clarity of costume silhouette, finely developed color gamma are always attached not only to the literary base of an image created by [the petitioner] but also to the concrete physical attributes of an actor and his personality.

Nikita Polyansky, designer for Walt Disney World Entertainment, states that the petitioner "has inimitable insights and abilities that cannot be duplicated by anyone else. There is no doubt she could be destined to make a major contribution to the American Theater! Indeed, to the entertainment industry in general."

Alexander Lisiansky, main artist of Gesher Theater, states that while working there as a designer, the petitioner "did not limit herself to the shallow reading of plays but always tried to get inside the internal world and find the often hidden but important traits of [the] play's characters." Mr. Lisiansky adds that the petitioner's "input always stood out through its clarity and unexpected aspects . . . that helped the artists find new colors and flexible solutions in their approach to the play."

The witnesses all appear to have worked directly with the petitioner; there is no indication that the petitioner is nationally or internationally known even among theater groups which have never employed her (which would be necessary to establish national or international acclaim). While all of these witnesses are complimentary of the petitioner's talents, their general praise does not constitute evidence of specific, major accomplishments.

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

The petitioner documents several plays in which the actors have worn costumes that she designed. The use of the petitioner's costumes in stage plays does not constitute "display" as contemplated by the regulation. Theatergoers generally attend the

theater to watch performances rather than to see the costumes; the costumes are ancillary to the performance. Furthermore, every costume designer's work is "displayed" in this fashion, and therefore public performances do not distinguish the top costume designers from others in the field.

The petitioner submits a list of exhibitions, prepared by the Union of Theater Activists of the Russian Federation. These exhibitions are more in keeping with the spirit of the regulation; an exhibition of costumes, unlike a play, takes place for the primary purpose of displaying stage costumes to the public. Sketches for some of the petitioner's designs are in the collection of the State Museum of Children's Theaters in Moscow, and costumes that the petitioner had created are in the permanent collection of the Museum of Moscow Art Theater. The petitioner thus appears to have satisfied this criterion.

The director requested further evidence to show that the petitioner meets the regulatory criteria for sustained national or international acclaim. In response, the petitioner submits additional letters and evidence.

Irina Roizin, president of the Brighton Ballet Theatre School of Russian Ballet, states that the ballet company has utilized the petitioner's services since 1996 and wishes to employ her permanently. Ms. Roizin states that the company's "1998 season was a hit only thanks to her extraordinary talent, exceptional insight [in]to the world of costume designs and long-standing experience in the field." The petitioner offers no evidence that Brighton Ballet Theatre School of Russian Ballet is a nationally known entity. The company's promotional materials indicate that the company is "the most renowned Russian Ballet school of New York City," and that it "offers ballet classes to children as young as two and [a] half years old." These promotional materials also state that the petitioner was a costume designer for Russia's famed Bolshoi Ballet, but the record contains no corroborating evidence from the Bolshoi company.

Mikhail Kolesnikov, chief curator at the Florida-based Artek Media (which "develops and implements multimedia educational and artistic projects"), also offers the petitioner employment in connection with several planned "multimedia projects." While these two above letters demonstrate some level of demand for the petitioner's services, neither potential employer has established its own eminence in the field or otherwise established that the positions offered to the petitioner represent top positions in the field.

The petitioner's involvement in the "Times Square 2000" celebration on New Years' Eve 1999 and New Years' Day 2000 did not begin until after she filed the petition. The petitioner submits no evidence

that this project secured her major acclaim,<sup>1</sup> nor that she secured the job through prior acclaim, but even if such evidence were available, it would be more properly considered in the context of a newly filed petition. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner also submits additional publications, in Russian with no accompanying translations. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

The director denied the petition, stating that while the petitioner has established some success in her field, the record does not demonstrate the sustained national or international acclaim demanded by the statute and regulations.

On appeal, counsel argues that the petitioner has satisfied seven of the regulatory criteria; the six discussed above, and one more:

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

Counsel asserts that the petitioner satisfies this criterion through her work for the Bolshoi Theater. The reputation of this entity is certainly distinguished, but the record offers no support for the claim that the petitioner played a leading or critical role there. Counsel states that the Service should pay special attention to the letter of Valery Levental. While Prof. Levental himself worked with the Bolshoi Theater, nothing in his letter indicates that the petitioner worked there, let alone played a leading or critical role. Prof. Levental states only that the petitioner "worked in many theaters of Europe and USA."

Counsel's discussion of the evidence is not persuasive. For example, counsel contends that the petitioner's involvement with "Times Square 2000" establishes the petitioner as one of "the most outstanding theater artists of . . . the twenty first century," but the record shows that if any costume artist won acclaim through that project, it was Michael Curry. The publicity surrounding that

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<sup>1</sup>The petitioner submits several news stories about "Times Square 2000," none of which mention the petitioner. One article states "Michael Curry has moved into the international ranks of costume and puppet design." There is no indication that the petitioner has risen to this level.

event did not mention the petitioner, who appears to have been at best a low-level consultant on the project. There is absolutely nothing in the record to suggest that the petitioner was a driving force behind "Times Square 2000" or that her input was any more significant than that of the countless other artists and technicians who were involved. That the petitioner was involved at all appears to have more to do with her previous contacts with a then-employee of the Walt Disney Company than with any broad reputation in her own right.

Some of counsel's other arguments revolve around discussion of untranslated Russian documents, which by regulation we must disregard. We note that grammatical aberrations in many of those translations that the petitioner has submitted call into question the accuracy of those translations.

Counsel maintains that the petitioner "is recognized as one of the best costume designers-artists of our time." The evidence, however, indicates that whatever recognition she has achieved is largely limited to her employers and clients that have directly worked with her.

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 herself as a theatrical costume designer 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 indicates that the petitioner shows talent as a costume designer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.