U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC 98 137 50537 Office: California Service Center Date: DEC 13 2000

IN RE: Petitioner: [redacted]
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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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

**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 in athletics. 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 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). Counsel states that the petitioner "reached the apex of her sport by winning the gold medal in the World Cup in 1989," and asserts

that the petitioner "received the highest honor awarded to athletes from the [redacted] government -- the Master of Sports." The burden is on the petitioner to establish that these honors are major, internationally recognized awards. The second one is plainly national rather than international. The petitioner has not demonstrated, through independent evidence, that her medal at the 1989 World Cup constitutes "the apex of her sport." It appears that "the apex of her sport" would be an Olympic gold medal in gymnastics. This Olympic competition is televised worldwide and attracts heavy media attention, with many top competitors (such as Nadia Comenici and Mary Lou Retton) winning recognition which lasts long after the end of the competition. The petitioner has not participated in any Olympic games, much less won a medal at such an event.

Barring the alien's receipt of a major, international 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, counsel 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 cites the petitioner's gold medals "at the World Cup and the European Championship," and the Master of Sports title which, according to counsel, "is given annually to the athlete that is selected as the best in their respective fields." The petitioner submits photocopies of various medals, for which the record offers no explanation as to their significance. The petitioner has submitted a copy of an "Identity Card" which refers to the petitioner as a "Master of sports," but there is nothing to corroborate counsel's claim that only one acrobat receives this title in a given year.

One certificate from 1988 identifies the winner by the masculine title "Mister." The name listed is not the petitioner's, but that of her spouse.

The petitioner's competitive certificates are dated between 1985 and 1991. There is no indication that the petitioner has participated in competitive acrobatics since 1991, when she was 16 years old. The record thus lacks evidence of sustained acclaim as a competitive acrobat. Furthermore, the petitioner specifies that she seeks to enter the U.S. not as a competitive athlete, but as an "entertainer" (the word used on the Form I-140 petition).

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

Counsel states:

> While performing with the world renowned [redacted] Troupe, [the petitioner's] extraordinary feats of athleticism play an integral part in the troops [sic] performance. [The petitioner] has the critical and unique role of top person in a human chain. This position is the most dangerous and demands only the top acrobats in the world.

The initial submission contains no documentation at all even to establish that the petitioner is a member of the Yankovi Troupe, although the petitioner submits a photocopy of a photograph which counsel identifies as the Yankovi Troupe.

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

Counsel states that the petitioner "has delighted audiences around the world." Every performing artist "displays" his or her work in this manner; audience viewing is intrinsic to the art form. This criterion is geared more towards visual arts. For performing artists, the standard should not be whether audiences have witnessed the petitioner's work, but rather the size of those audiences, relative to other audiences at acrobatic performances. Hence, the regulations offer the following criterion specifically for performing artists:

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

The petitioner, however, offers no evidence to compare her commercial success as a circus performer to that of others in the field.

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

Counsel states:

> Few institutions are as distinguished as Circus Circus in the United States. Circus Circus has consistently sought and employed the most talented and athletic circus performers in the world. Currently, [the petitioner] enjoys a leading role at Circus Circus fronting the high flying Yankovi Troupe.

The initial documentary submission contains no documentation at all from, or even referring to, Circus Circus, let alone to establish that the petitioner has consistently been a headline performer there.

The director instructed the petitioner to submit further evidence to meet at least three of the regulatory criteria. In response, the petitioner has submitted letters from three witnesses, as well as a statement in which counsel asserts that the director's rejection of the initial evidence "strains credulity." Given the almost skeletal nature of the initial submission, there is negligible justification for counsel's characterization.

Olympic Gold Medalist [redacted] former Bulgarian Olympic coach [redacted] and coach [redacted] all describe the petitioner's competitive achievements between 1989 and 1991, and mention that the petitioner is now a circus performer. They do not indicate that the petitioner has sustained her reputation as a competitive athlete by competing after 1991, or that the petitioner is among the best-known circus acrobats in the United States or elsewhere. While the opinions of these witnesses are not wholly without weight, they remain opinions rather than objective evidence of sustained acclaim. Such opinions, solicited from witnesses selected by the petitioner, cannot take the place of the "extensive documentation" demanded by the plain language of the statute. If anything, the significant achievements of several of these individuals overshadows those of the petitioner herself, indicating that the witnesses are considerably closer than the petitioner is to the top of the field.

[redacted], owner of Wings Sports Acrobatics and Tumbling Club, states that her club has trained athletes for high-level competition, including the Olympics, and that the petitioner is well qualified to teach at the club.

The director denied the petition, noting the petitioner's claims are wholly or largely unsubstantiated, and that the record offers no objective documentation to establish the significance of the petitioner's awards.

On appeal, counsel states that the petitioner "demonstrated extraordinary ability by documenting her world championship in Sports Acrobatics, her contract to train and develop future talent in the U.S. with one of the top three such facilities in the U.S. and Master of Sport Award from her Bulgarian government."

The record, at the time of the director's decision, contained no evidence of any "contract." [redacted] letter mentions her intention to employ the petitioner, but this letter is hardly a binding contract. There is no evidence to support counsel's claim that Ms. Miller "is willing to pay the [petitioner] $1,000 per week as a coach and trainer." The record contains no evidence that the petitioner has ever, in the past, acted as a coach or trainer, let alone achieved sustained acclaim in that area. Rather, the petitioner competed until age 16 in 1991, after which time she became a circus performer and, on the petition, stated her intention to enter the U.S. as an "entertainer." The initial

evidence said nothing about the petitioner's newly-stated intent to work as a coach and trainer.

In the appellate brief, counsel argues that the director "completely ignores the many international, European and Bulgarian championships that the [petitioner] has received." On the contrary, the director's decision contains a lengthy paragraph about the petitioner's awards, and her failure to demonstrate the significance thereof. The mere existence of the awards does not establish their significance.

The petitioner has submitted minimal documentation to support her claim. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). New evidence regarding the petitioner's intent to work as a coach is without weight because that was not the petitioner's stated intent at the time she filed the petition. The petitioner stated that she intended to enter the U.S. as an entertainer, and the initial evidence regarding her work as an entertainer consists of one photograph.

The petitioner has not produced the "extensive documentation" demanded by the statute to establish sustained national or international acclaim in her field. 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 an acrobat 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 had won competitions in the late 1980s and early 1990s, and that she qualifies for employment as a coach, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field either as a coach or as an entertainer, or that she has sustained whatever level of success she had once reached as a competitive acrobat in her own right. 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.