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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: WAC-00-061-52245 Office: California Service Center Date: JUN 17 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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.

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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. 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 he 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). 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, 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.

The petitioner submitted a certificate from the Cultural Department of the People's Republic of China, with translation, affirming that his act, [redacted] won the [redacted] the Chinese National Acrobatic Match in September 1995. On appeal, the petitioner submits a certificate from the Shenyang Acrobatics Troupe asserting that this is the highest honor in China for acrobatics. The petitioner, however, has failed to provide any evidence of press coverage of the event or other evidence of its significance to support that assertion. Nor has the petitioner established the number of competitors. In addition, the petitioner submitted a certificate and translation from the Organization Committee of the Second Wuhan International Acrobatic Art Festival of China confirming that the petitioner's act '[redacted] won the Huang He Silver Prize. The record contains no evidence of the significance of this competition, such as the number of the competitors.

The petitioner also submitted evidence of regional competitions at which his troupe received awards. The Organization Committee of the [redacted] Preliminary Match confirms that the petitioner's act "Strap" won the Best Act Prize in January 1991. An undated certificate from the People's Government of Liao Ning Province asserts that the petitioner's act [redacted] won Best Annual Act (Second Prize). These are regional and provincial awards and cannot be considered evidence for this criterion. The Organization [redacted] onfirms that the dance in which the petitioner participated, "Celebration on Children's Day" won first prize in June 1991. It is not clear that the petitioner competed against experts of all ages for this award.

Further, the petitioner submitted a certificate of appreciation for his participation in the April Spring Friendship Art Festival in Korea. The petitioner did not initially submit any evidence that he won an award at that festival. On appeal, the petitioner submits another certificate reflecting that the competition was in 1994 and that [redacted] was awarded a "prize." A certificate from the Shenyang Acrobatics Troupe also submitted on appeal asserts that the petitioner "created, directed, and played a leading role" for the act which was awarded a gold prize.

On appeal, the petitioner submitted evidence of the Shenyang Acrobatics Troupe's competition at the [redacted] February 1996. While the Chinese certificate from the Shenyang troupe indicates the petitioner played a leading role in the group's silver prize, the official certificate from the [redacted] while not translated, does not appear to make any mention of a prize. Evidence of an award should derive from the organization that issued the award.

The only prize for which the petitioner has documented any significance is the Festival Mondial du Cirque de Demain. While the petitioner did not provide a translation of the French award certificate, it references "Medaille d'or" and the "Troupe de Shenyang." Below the certificate are Chinese characters which are not clearly part of the original certificate. The author of these

characters is unknown. The petitioner provided a translation of the Chinese[1] which asserts that the petitioner's act, "Bunqee" won the golden prize at the 19th France Tomorrow International Acrobatic Festival on January 29, 1996. On appeal, the petitioner submits a certificate from the Shenyang Acrobatic Troupe affirming the petitioner's "leading role" in this competition. The petitioner also submitted the translation of an article allegedly published in *Liaoning Daily* on February 11, 2001, regarding the prizes won by the Chinese in the 2001 competition. The original article is not in the record. The article asserts that the French competition was established in 1997 and is a "top class" competition. In 2001, Russia, France, Germany, the United States and Canada competed in 31 events for one Golden Prize in each event. While the competition clearly attracts competitors from different nations, it is still not clear that the award is internationally recognized as significant. The record includes no press coverage of the event beyond a single local Chinese newspaper representing the province which won awards at the competition.

The petitioner has not established that the awards presented to his troupe are a reflection of national or international acclaim. The record does not establish that the competitions are nationally or internationally recognized although they may draw competitors from more than one nation. As stated above, the record contains no evidence that these competitions receive national or international media attention.

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 submitted his membership card for the International Jugglers Association, and the International Brotherhood of Magicians. As stated by the director, the petitioner failed to submit the official membership requirements for this association. The petitioner also submitted a letter fro[redacted]nd Artists Association, who asserted that the petitioner is "one of those very few popular and prestigious members of my association." By stating that not all members of the association are popular and prestigious[redacted]plies that the association does not require outstanding achievements of its members. It remains, the record does not contain the official membership requirements for the Chinese Acrobats and Artists Association. On appeal, counsel argues that years of experience and outstanding achievement are required for the International Juggling Association and the International Brotherhood of Magicians. Counsel further argues that only 800 of the 10,000 acrobats in China are members of the Chinese Acrobats and Artists Association. As stated by the director, the assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The record still contains no evidence regarding the official membership requirements for any of the above associations.

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[1] The translator's certification indicates that she is fluent in Chinese and English but makes no mention of French. Moreover, the English does not appear to be a word for word translation of the French. As such, it is assumed that the translation provided is of the Chinese characters appearing below the certificate.

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 submitted a very short article published in the People's Daily on September 6, 1992. The petitioner failed to submit a complete translation as required by the regulation. Rather, the uncertified partial translation summary provides, "the article is briefly about the great success of the Grand Opening of [redacted] Troupe in Vienna Austria. [The petitioner] performed the Act 'Carry Bridal Sedan Chair.'" This incomplete translation does not establish that the article is primarily about the petitioner, or even that he is mentioned by name. While Olympic medallist [redacted] asserts that he knew of the petitioner through his "extensive press coverage," one brief article that fails to mention the petitioner by name cannot be considered extensive press coverage of the petitioner.

The petitioner also submitted an article published in the Chinese-language *Las Vegas Chinese New Year Special, a Travel Monitor to Las Vegas*. Once again, the petitioner failed to submit a complete translation. The uncertified partial translation summary provides:

> The article is mainly about what an important role [the] Liao Ning Star Acrobatic Troupe plays in the "Imagine" show at the [redacted] [The petitioner] is the key star acrobat of the act "Bunqee." The troupe has signed a three-year contract with one of the top-flight entertainment companies in Vegas --- Dick Foster Productions.

The summary translation is ambiguous as to whether the article itself includes all of this information. Moreover, the publication does not appear to constitute major media. The publication appears to be a local publication designed to promote tourism in Las Vegas, suggesting the "articles" are essentially advertisements. Moreover, a publication published in a language the majority of the national population cannot comprehend cannot be considered major media.

In response to the director's request for additional documentation, the petitioner submitted an uncertified "excerpt translation" of an article published in the *Asian Weekly News* in December 1998. The article simply reports that Bunqee, performed by the former Shenyang Acrobatic Troupe of China, is appearing at the [redacted] The petitioner is not mentioned by name. Moreover, the petitioner has not provided any evidence as to the circulation of the publication. As such, the petitioner has not established that *Asian Weekly News* is major media.

The petitioner also submits the programs for performances. Programs, while printed, are not published material and are clearly not major media.

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

Initially, the petitioner submitted letters of appreciation from venues where he has performed and a letter fro[redacted] the Chairman of the Chinese Acrobats and Artists Association, asserting that the petitioner's performances are award-winning and well received. While complimentary, these letters are not evidence of the petitioner's contribution to the field. They do not establish that the petitioner had accomplished feats which have influenced the world of acrobatics or to which other acrobats aspire. Nor did the record reflect that the petitioner had developed any new acrobatic techniques widely adopted in the world of acrobatics.

Counsel argues on appeal that the petitioner "has played a path-breaking role in spreading the fame of Chinese acrobatics in Asia, North America, and Europe." Counsel further asserts that the petitioner is responsible for the switch from a bamboo pole to the pole-vaulting pole for bunqee (where a woman performs on a pole held by two men.) Finally, counsel asserts that the petitioner is responsible for the concept of adding a story to this act.

The petitioner submits three letters in support of these assertions. The leader of the [redacted] Acrobatic Troupe [redacted] onfirms the petitioner's innovative contributions to bunqee for which he was promoted to assistant coach. Olympic medallis[redacted] asserts that the petitioner is one of a limited number of performers who can perform some of his acts and that others "are considered uniquely his own, because they require innovative intuition, immense strength coupled with incredible suppleness. [redacted] a theater agent, provides general praise of the petitioner.

The new evidence fails to sufficiently establish the petitioner's contribution to the field of acrobatics. [redacted] acknowledges other acrobatic groups were experimenting with alternatives to the bamboo pole. The record contains no evidence that the petitioner's idea to use the pole-vaulting pole has been adopted by other troupes. In addition, the record fails to resolve exactly what stunt the petitioner is the sole performer to execute.

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

Counsel argues that the petitioner's performances around the world serve to meet this criterion. It is inherent to the field of acrobatics to perform. Merely performing is evidence of employment or, at best, success. It is not evidence of national or international acclaim. Moreover, circuses and related performances are not artistic exhibitions or showcases.

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

Counsel refers to the programs, letters from venue owners, and large cast photos as evidence for this criterion. On appeal, counsel asserts that the Shenyang Acrobatic Troupe is world renown and arguably China's best performing unit. While the record contains some evidence that the petitioner's troupe is award winning[2] and appreciated at the venues where it performs, the petitioner

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[2] As stated above, the petitioner has not established the significance of the awards presented to the troupe.

has not fully established that the troupe has a distinguished reputation. Even if we accepted that the petitioner's troupe has a distinguished reputation, the record contains no evidence that the petitioner has played a leading or critical role for the troupe, which has 160 artists and has produced movies, documentaries, films, and television videos according to the materials submitted on appeal. The article in the *Asian Weekly News* identifies Li Qui Jiao as the leader of the troupe.

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

Initially, the petitioner submitted a letter from [redacted] dated August 24, 1998, offering the petitioner a position with Esqueda Entertainment Enterprises for $2450 per month. The petitioner, however, has not submitted any evidence of the salary range for other acrobats at the top of their field. In response to the director's request for additional documentation, the petitioner submitted his contract with [redacted] for $3,450 monthly salary. The contract is dated April 6, 2000, after the petition was filed. On appeal, the petitioner submitted a contract with the Tai Chi Acrobatic Group also dated after the date of filing. As such, they cannot be considered evidence of the petitioner's eligibility as of the date of filing.

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

The petitioner submitted a ticket for the Imagine show at the [redacted] reflecting a price of $39.95. The ticket price cannot demonstrate the commercial success of the show as it does not demonstrate how many people bought tickets. On appeal, counsel refers to a letter from [redacted] at the [redacted] thanking the petitioner for his performances and extending holiday wishes. It remains, the petitioner has not demonstrated that he personally was responsible for the success of the show at the [redacted] For example, the record contains no evidence that the show was promoted with the petitioner's name receiving top billing or that [redacted] popularity increased when the petitioner was known to be performing.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an acrobat 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 an acrobat, but is not persuasive that the petitioner's achievements set him significantly above almost all 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.