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 99 115 51863 Office: CALIFORNIA SERVICE CENTER Date: JAN 1 1 2002

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)

IN BEHALF OF PETITIONER:

[redacted]

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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for 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.

In this decision, the term "prior counsel" shall refer to James M. Stillwaggon of White & Case, who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record.

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 CFR 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 CFR 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.

At the time she filed the petition, the petitioner performed as an acrobat with Cirque du Soleil in Las Vegas, Nevada. Prior counsel summarizes the petitioner's career:

> In 1991 [the petitioner] placed tenth in the Saskatoon National Tumbling Competition and in 1992 she placed third in the Quebec National Tumbling Competition. . . .
>
> [The petitioner] has made a number of appearances showcasing her artistic and athletic ability. She has appeared as a featured artist on both Good Morning America and the Rosie O'Donnell Show. . . . [The petitioner] also starred in the movie Treasure Island.
>
> [The petitioner's] most recent accomplishment is her ongoing position as a feature performer in Cirque du Soleil. . . .
>
> She performed for three years in Cirque du Soleil's Las Vegas based show, "Mystère," and is currently performing in the company's two year North American tour of "Quidam," in which she portrays a main character.

Prior counsel observes that only a tiny fraction of the world's professional acrobats are sufficiently talented to secure a place in Cirque du Soleil. It does not follow, however, that employment with such an entity is inherently demonstrative of extraordinary ability and sustained acclaim as contemplated by the regulations. Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

The assertion that employment on a major league athletic team applies here, by extension; the petitioner's employment by a major entertainment company does not imply that the petitioner's own reputation equals or approaches that of her employer.

The regulation at 8 CFR 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. Neither counsel nor prior counsel has expressly stated which of the criteria the petitioner claims to have satisfied, but the materials submitted appear to conform most closely 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's resume indicates that she was in the "Top Three of the Quebec National Tumbling Competition" in 1992, and that she placed tenth at the Saskatoon National Tumbling Competition in 1991. The petitioner's resume does not constitute documentary evidence of these prizes. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Articles from unidentified newspapers indicate that the petitioner won medals or titles in various competitions, but there is not sufficient information in the articles to establish that the competitions were national or international, rather than local or provincial, in scope. The articles do not confirm the details listed on the petitioner's resume, and it is uncertain whether the competitions mentioned in the articles are the ones claimed on the resume. Another article shows that the petitioner was one of nine athletes in Drummondville, Quebec, to share a $5,000 "support grant" in 1991. The grant appears to have been local in nature, administered by a city counselor.

The above articles, taken as a whole, show that the petitioner enjoyed some success as an amateur competitive gymnast in 1991 and 1992, but they do not establish or point to a sustained pattern of acclaim at the highest national or international levels.

> *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 has submitted French-language newspaper clippings with uncertified English translations. The clippings do not include the titles of the newspapers from which the clippings were taken, and therefore we cannot determine whether the newspapers are major national publications as opposed to local ones. Some articles are about the Djinn Gymnastics Club in Drummondville, Quebec, and they mention the petitioner only insofar as she was one of the gymnasts in the club. Other articles report various competitions, and identify some of the competitors (including the petitioner). The petitioner is not singled out for coverage in any of the articles.

The petitioner submits several magazine and newspaper articles about Cirque du Soleil. Articles about the petitioner's employer cannot satisfy this criterion unless the petitioner herself receives substantial coverage therein. An article in *Las Vegas Style* includes interviews with the petitioner and another Cirque du Soleil performer. The record does not indicate whether *Las Vegas Style* is a nationally-circulated publication or, as its title implies, a local publication circulated only in the vicinity of Las Vegas. Another article, about Cirque du Soleil official Claude Krespin, includes a photograph which, according to the petitioner, depicts the petitioner, but there is no caption to identify the acrobat depicted. The petitioner is identified in a photograph in *Dance Magazine*, but only as an example of a Cirque du Soleil acrobat. Other articles do not mention the petitioner at all, and many date from several years before the petitioner joined the troupe. These articles indicate

that Cirque du Soleil earns widespread media coverage, but they do not show that the petitioner as an individual earns such coverage.

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

Cirque du Soleil, an internationally renowned acrobatic circus troupe, indisputably enjoys a distinguished reputation. Prior counsel has indicated that the petitioner "portrays a main character" in Cirque du Soleil's presentation of "Quidam," which would thus be a leading or critical role for an organization that has a distinguished reputation.

Allyson Brierly, artistic coordinator of "Quidam," asserts that the petitioner is "portraying a main character and performing the spanish web number and the skipping number in 'Quidam.'" Ms. Brierly does not elaborate on the petitioner's role. A.D. Watson, artistic director of Cirque du Soleil, states only that the petitioner "has a character role in Quidam," and offers the rather vague assertion that the petitioner "has always played an important role at the heart of the House Troupe." Rene Bibaud, coach and artist with Cirque du Soleil, confirms the petitioner's involvement with "Quidam" but says nothing of her role therein. Mr. Bibaud generally restricts his comments to an appraisal of the petitioner's work ethic and acrobatic skill. Documents submitted on appeal, to be discussed further below, raise questions as to what Cirque du Soleil's officials consider to be a "critical role."

The director denied the petition, stating that the petitioner's success and recognition as a competitive acrobat "did not raise [sic] to the national or international level required." The director found that the collective acclaim of Cirque du Soleil does not automatically transfer to individual members, and the director also concluded that the petitioner is now an "entertainer" and "actress" rather than an "acrobat."

On appeal, counsel states that the director's finding that the petitioner "now appears to be a performer, not an acrobat" fails to take into account that the petitioner "performs as an acrobat." We agree with this assessment. It is readily apparent from the materials in the record that the petitioner's performances with Cirque du Soleil are of an acrobatic or gymnastic nature, and thus there is a continuity between her early efforts in competitive gymnastics and her current employment with Cirque du Soleil.

The director had stated that the petitioner's work in "Treasure Island" was as an actress, while counsel states that the petitioner appeared in the role of an acrobat. In fact, the record as it now stands contains no evidence at all about the petitioner's claimed appearance in the film. As noted above, the petitioner's resume amounts to a claim rather than documentary support for that claim. Also lacking from the record is any evidence to establish that the petitioner had appeared on the several television programs named on her resume, or to demonstrate the extent of her activity on those programs. A group performance, in which the petitioner's name is never even mentioned, carries less weight than a one-on-one interview on a national talk show.

In a new letter submitted on appeal, Pavel Brun, artistic director of Cirque du Soleil's "Mystère," states that the petitioner "has a critical role in Mystère because she performs in three separate acts of the show." Those three acts are "Taiko," in which the petitioner is one of 26 credited performers; "Chinese Poles," in which the petitioner is one of 43 credited performers (40 of whom, including the petitioner, are credited alphabetically; the remaining three are identified separately as "specialists" and "principal performers") and "Bungee," in which the petitioner is one of seven credited performers. All seven of the "Bungee" performers, including the petitioner, also perform in "Taiko" and "Chinese Poles," indicating by Mr. Brun's logic that every performer in the "Bungee" act plays a critical role because every performer appears in at least two other acts. Documentation identifying "the Characters" does not include the petitioner's name, indicating that the petitioner is an ensemble performer rather than a featured or highlighted artist.

The petitioner had, evidently, transferred from "Quidam" to "Mystère" after the filing of the petition. Even assuming that the petitioner does have a critical role in "Mystère," she did not have such a role as of the petition's filing date. If the petitioner was not already eligible when she filed the petition, subsequent developments cannot make her eligible. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *See Matter of Izummi*, 22 I & N Dec. 169 (Comm. 1998), and *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.

An interview with the petitioner appeared in the December 26, 1999 issue of *Showbiz Weekly*. This publication is local rather than national. The article repeatedly states that "Mystère" is staged at Treasure Island, with no indication of where Treasure Island is (i.e. what city), and a telephone number provided at the end of the article has no area code, indicating that readers are presumed to be in the local calling area. Furthermore, this article was published ten months after the petition's February 25, 1999 filing date, and so for reasons stated above cannot retroactively establish eligibility as of that filing date.

Also deriving from well after the filing date are internal Cirque du Soleil "Media Request" forms, indicating that the petitioner was one of four acrobats interviewed by *Showbiz Magazine* on May 26, 1999, and one of three acrobats interviewed by the Korean Broadcasting System on August 9, 2000. The "Media Request" relating to *Showbiz Magazine* states "'Mystère' has a weekly article that appears in this Las Vegas-based magazine." This confirms that the magazine is indeed local. Also, if "Mystère" (which does not tour, but rather is based permanently in Las Vegas) has "a weekly article" in the magazine, then it would seem that interviews with troupe members are routine rather than a special sign of acclaim or recognition. The "Media Request" pertaining to the Korean Broadcasting System states that the Korean network "produces a weekly program where they introduce many different interests from around the world. . . . For this production they have chosen circus as their next subject." The form informs the petitioner and the other named acrobats that the director "will be asking about your experiences within Cirque du Soleil. How long have you been here? When did you start here? How did they find you, etc..." This indicates that the

petitioner was chosen as an illustrative example of a Cirque du Soleil acrobat, rather than singled out due to her acclaim and reputation.

The record as a whole shows that the petitioner had some regional success as a competitive gymnast in the early 1990s, and that she has a successful career with an internationally famous circus troupe, but the evidence does not establish that the petitioner has achieved sustained national or international acclaim in her own right. Whatever recognition the petitioner has attracted as a member of Cirque du Soleil appears to owe more to that circus' reputation than to the petitioner's own.

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 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. 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.