U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

[redacted]

File: WAC 01 239 55036 Office: CALIFORNIA SERVICE CENTER Date: MAY 7 2003

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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

In this decision, the term "prior counsel" shall refer to [redacted] who represented the petitioner through the filing of the appeal. The term "counsel" shall refer to the present attorney of record, who provided a subsequent appellate brief.[1]

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 pertinent regulations 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.

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[1] We note that both attorneys submitted appeals. Milton Wolf's appeal was the first one received. Mr. Wolf stated that a further brief would be forthcoming within 30 days, but the record contains nothing further from Mr. Wolf. Subsequently, the present attorney of record submitted an appeal form with a brief. This appeal form was not timely submitted, and could not be accepted in any case because an appeal was already pending. We will, however, consider the accompanying brief, as it was submitted within the 30-day period previously requested by Milton Wolf.

[redacted] of Armenfilm, an Armenian film studio, states that the petitioner is "a renowned hypnotist of international acclaim and recognized by his professional colleagues as a first-ranking artist." [redacted] writer and producer for Vanadzor Television, a Los Angeles-based television station, states that the petitioner gave "three wonderful and successful performances . . . in the Glendale High School auditorium," and that the petitioner also "became a psychological healer and a healer for many of the illness[es] for many of the residents here in Los Angeles. . . . [The petitioner] and his family volunteered to give free performances and healing sessions for small clinics, schools and nursing homes." Most of the witnesses of record are Armenian expatriates living in the Los Angeles/Glendale area.

A business card (printed in both English and Armenian) in the record shows that the petitioner is also a "Certified Clinical Hypnotherapist," and M[redacted] office manager of Heratsi Medical Group, states that the petitioner's "addition to our medical group will significantly improve our ability to treat our patients." The record contains a second letter signed by M[redacted] and another letter signed by [redacted] administrator of Central Brand Medical Clinic, Inc. The two letters contain identical text stating that the petitioner's "experience as a hypnotherapist outspread the local area where he started his work." The record also contains several letters signed by officials of a number of adult day health care centers, which again contain identical text. It is not clear who actually wrote these letters.

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 record contains references to prizes, such as a gold medal at "the All-Union Variety Entertainment Festival" in 1988. The initial submission contains minimal information about the prizes and no first-hand documentation from the awarding entities.

> *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 record contains a copy of the petitioner's temporary (90-day) membership card in the Magic Castle Academy of Magical Arts. Prior counsel states "[o]nly highly acclaimed illusionists are allowed to apply for membership," but the record contains no evidence to substantiate this 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). We further note that this temporary membership card was issued on March 4, 2002, well after the petition's April 2001 filing date.

> *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 record contains a one-page article in Armenian, including a photograph of the petitioner, identified as being from the monthly publication *Ashkarhi Shoorj*. The accompanying translation is incomplete, including only a two-sentence fragment of the article. A somewhat longer translation accompanies an article from a publication variously identified as *Sovetakan Hayastan* and *Sovetakan Karabagh*. This article states that the petitioner's "program full of miracles astonishes the audience," and describes some of the petitioner's conjuring tricks. Another article from the same publication refers to the petitioner as "the prizewinner of All-Union competitions." An article from *Banvor* also mentions this prize, and describes other tricks the petitioner has performed. An article from *Yerekoyan Yerevan* discusses the petitioner's hypnotherapy work. The petitioner also submits an article that mentions him but focuses on his son, who seeks to pursue a career as an illusionist.

The record contains no information about the above publications to establish that they are major, national or international media rather than local or minor publications. All of the original Armenian-language articles appear to be much longer than the translations provided by the petitioner, and thus it does not appear that any of the translations are complete. 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).

In a subsequent submission, the petitioner supplies a copy of an article from *USA Armenian Life* magazine, published in California. The one-page article about the petitioner begins with a discussion of the petitioner's performing career but focuses on his subsequent work as a hypnotherapist, listing some of the individuals the petitioner has treated and the conditions from which they suffered, such as headaches and high blood pressure. This article was published in March 2002, after the director had issued a request for further evidence; it did not exist at the time the petition was filed in April 2001. 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. *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). *See also Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner has also submitted additional articles from Armenian-language periodicals published in southern California. The petitioner has not established that these publications, or *USA Armenian Life*, are major national publications. They appear to be primarily local publications, with circulation limited to the Armenian community in southern California. This limitation is consistent with the rest of the record of proceeding.

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.

The initial submission contained nothing regarding this criterion. Subsequently, the petitioner has submitted a letter from [redacted] director of the Armenian State Philharmonic, who states "[f]rom 1990 through 2000, [the petitioner] has regularly been selected as a jury member for different International Festivals," none of which are identified.

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

The petitioner submits promotional materials from various performances by the petitioner, mostly in the vicinity of Glendale, California. An alien working in the performing arts cannot satisfy this criterion simply by showing that he or she has performed in front of audiences; virtually everyone in the performing arts can make the same claim, by virtue of the very nature of the occupation. A separate criterion, addressed further below, deals specifically with the performing arts. The present criterion deals more with visual and plastic arts such as painting and sculpture, where the best-known artists are set apart from others in the field by virtue of exhibitions at nationally known museums.

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

The petitioner submits copies of promotional materials for performances at such venues as Glendale High School and St. Thomas Armenian Church Hall in Tenafly, New Jersey. Tickets for the Glendale performance were sold at Barseghian Photo, Avakian Grocery and Chateryan Video. The petitioner has not established the degree of commercial success he has enjoyed as a performer; it cannot suffice simply to demonstrate that the performances have taken place. The petitioner has not shown that top magicians and hypnotists in the U.S. generally perform at high schools and church halls. Because the documented performances took place in the United States, it is entirely appropriate to compare the success and scale of those performances with those of other magicians and hypnotists performing in the United States.

Evidence of the petitioner's performances outside the United States is limited to photographs and some promotional materials. This material suffices only to show that the petitioner has performed outside the United States. Participating in an international tour is not automatically demonstrative of acclaim. The petitioner has not shown, for instance, that he performed at larger venues, before larger audiences, than most other acts in his specialty in the countries he visited.

[redacted] of Armenfilm states that the petitioner "is known in Armenia as a talented actor." Mr. [redacted] identifies some film titles, but provides no evidence to establish the commercial success of these films. Mr. [redacted] also states "many films were created about" the petitioner's activities, but he provides no titles or evidence about these films.

The petitioner submits the packaging from an Armenian-language video course (produced in 2000 and manufactured in the United States) entitled *Trust Me, and You Will Be Healthy*. The record

contains no sales figures to establish that this product has sold substantially more copies than most others in the same genre. [redacted] of Armenfilm states that an earlier videocassette entitled *Be Always Healthy* sold 1,000 copies in 1990, 5,000 copies in 1995 and 10,000 in 2000. The record contains no other documentation or information about *Be Always Healthy*.

The director denied the petition, observing several perceived shortcomings in the petitioner's evidence. For example, the director noted the lack of information about the petitioner's claimed prize from 1988, and that local media do not establish national-level media coverage. The director concluded that the petitioner has failed to establish himself as one of the top hypnotherapists or magicians in the United States.

On appeal, prior counsel makes several general but unsupported assertions. For instance, prior counsel states that articles about the petitioner have appeared in "numerous major newspapers both in and out of Armenia," but there is no accompanying evidence to show that these papers are in fact "major newspapers" rather than minor local publications. Prior counsel states that the petitioner's "videos have sold in excess of 16,000 copies in a short time," whereas the record indicates that the 16,000 copies figure applies to a period of more than ten years, from 1990 to 2002.

The documents submitted by the present attorney of record appear to have been originally intended for submission with a new petition; the documents make no mention of the director's decision or of any appeal. Nevertheless, the record contains an appeal form from the same attorney, bearing the notation "please see attached documents."

Counsel states that the petitioner's aforementioned 1988 award represents a major, internationally recognized award, which by itself is sufficient to warrant approval of the petition. As noted above, the record does not even contain first-hand documentation of this award, let alone persuasive evidence that the award is internationally recognized as a major award. A major international award (i.e. an award with standing comparable to a Nobel Prize, Academy Award, or Olympic medal) should be readily amenable to verification through some means other than witness letters written several years after the fact.

Counsel mentions other claimed awards. Counsel states that the petitioner won a "diploma" at the 1974 Moscow Circus Art Contest, but the only mention of this prize in the record is a magazine article from almost thirty years later.

The record does contain copies of "diplomas" issued to the petitioner by various entities. The Armenian State Philharmonic acknowledged the petitioner's "profound performing mastery" in the "Friends Meet In Leninakan" festival. The Armkonsert International Center of Art recognized the petitioner twice. A 1991 diploma recognized "high achievements and mastery in the sphere of performing art," and a diploma from 1996 recognized the petitioner's "long and productive activities in the sphere of culture." In 1997, the petitioner won the first prize in the Armenian Illusionists Contest. The 1997 diploma is the only one to specifically mention a prize or award. Some of the originals appear to be "form" documents with the petitioner's name typed or written into blank spaces, consistent with the issuance of a considerable quantity of such documents. The record continues to lack reliable information about these awards.

Counsel states that the petitioner is a member of three "professional clubs." One of these, the Academy of Magical Arts, we have already discussed. As noted, the petitioner did not become a member of this association until early March 2002, several weeks after he was informed in mid-January that his initial evidence was insufficient. The president of the Academy of Magical Arts states in a new letter that the petitioner was approved for membership after he "successfully met the criteria necessary," but this official never specifies what those criteria are.

Counsel states that the petitioner is also a member of the "Magicians Club of Original Genre" and the "Moscow Club of Magicians." This claim, like many other claims on appeal, is supported by witness letters but not by first-hand documentary evidence of the kind which ought to be readily available. The statute calls for "extensive documentation" of sustained acclaim, and the regulation at 8 C.F.R. § 204.5(h)(3) calls for a variety of types of evidence. The petitioner cannot compensate for the absence of direct, documentary evidence, simply by submitting letters (from witnesses whom he has selected) that contain a variety of claims, for instance indicating that the petitioner has acted as a judge at an unspecified number of unidentified events. One witness indicates that the petitioner has an upcoming performance at the MGM Grand Hotel in Las Vegas, but the record contains nothing from the management of the hotel to confirm this assertion.

Counsel discusses previously unclaimed regulatory criteria:

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

Counsel cites the various witness letters submitted throughout this proceeding, and states "[i]t is obvious that [the petitioner] has made remarkable contributions to the art of magic." Counsel does not identify any specific contribution, nor do the witnesses of record. They merely attest, in general terms, to the petitioner's skill and reputation, while listing claimed prizes and awards (which fall under a separate criterion).

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

Counsel states that the petitioner "has been employed by the main Armenian professional organization of entertainers and show man [sic] 'GosConcert." . . . It has always been extremely essential for the above mentioned organization as far as [the petitioner] was the only entertainer in the organization who commanded the highest income during his shows." Counsel cites no evidence in making this claim; counsel simply states that the petitioner's critical role should be inferred from his high income. High remuneration for services is the subject of a separate criterion, below, and even if proven, such remuneration does not adequately establish a leading or critical role for a distinguished organization or establishment.

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

Counsel states that the petitioner "had been receiving from 25-32 Rubles per show which was the highest possible rate of pay as far as the average salary in the former Soviet Union was around 100 Rubles per month." Following the collapse of the Soviet Union, and the consequent independence of Armenia, counsel states that 7,000 people bought tickets for 2,000 drams apiece to see the petitioner perform at the Yerevan Sport and Concert Hall. Counsel calculates the total ticket sales as 14,000,000 drams "where the average salary is now around 3,500 Armenian Drams." The petitioner submits no direct evidence of his remuneration. Vague assertions by witnesses that the petitioner used to be his country's highest-paid magician cannot suffice. Claims regarding ticket sales fall more properly under the criterion relating to commercial success, unless the petitioner can show that the entire price of each ticket went directly to him. Even then, the record does not contain the types of evidence specified in the regulations, such as box office receipts.

Virtually all of the evidence and arguments submitted on appeal concern the petitioner's work as an entertainer. When asked for evidence of his continuing work in the field, however, the petitioner has submitted contracts and other materials showing that he performs hypnotherapy at medical clinics and adult day health care facilities, providing treatment mostly for psychosomatic disorders. The petitioner's intended work in the U.S., therefore, appears to be demonstrably different than the activities which purportedly earned him acclaim in Armenia. In terms of the performing arts, the petitioner's work during his several years in the U.S. appears to have been largely confined to high schools, banquet halls, churches, and similar venues. Whatever recognition the petitioner may have earned in Armenia, in the U.S. that recognition is largely limited to Glendale's Armenian community. Crucial claims are uncorroborated or exaggerated, thereby diminishing the overall credibility of the petition.

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 a hypnotist, hypnotherapist, or magician 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.