

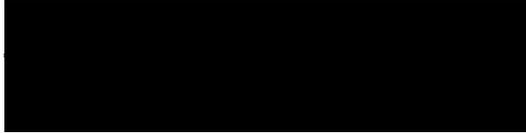


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC 01 097 50306 Office: Vermont Service Center Date: AUG 16 2002

IN RE: Petitioner: [Redacted]
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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 that the beneficiary has earned 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):

Initial evidence. A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, internationally recognized award), or at least three of the following:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) Published material 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;

(iv) 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 specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

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

This petition, filed on February 5, 2001, seeks to classify the beneficiary as an alien with extraordinary ability as a director of dance and training. According to the non-technical description of the proposed employment listed under Part 6 of the I-140 petition, the beneficiary seeks "to train dance instructors in International Ballroom dance, as well as students." This decision will consider whether the petitioner has established the beneficiary's national or international acclaim as a professional dancer. We will also examine whether the beneficiary has sustained his acclaim as a dancer through his efforts as a teacher/trainer.

The record reflects that the beneficiary entered the United States in 1994. Therefore, when considering whether the beneficiary has earned sustained acclaim, it is entirely appropriate to examine his reputation in the United States as well as in his native Greece.

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 relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level. The petitioner has submitted evidence that appears 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 submits a letter from Socrates Charos, President of the Greek Counsel of Ballroom Dancing, stating that the beneficiary took first place in Greece at the "1992 American Style Championships (Modern and Latin), 1992 International Style Championships (Modern and Latin), 1993 Greek Cup in International Style (Modern and Latin), and 1993 International Style Championships (Modern and Latin)." An additional letter from the National Dance Council of Greece states that the beneficiary was "Champion of Greece in Ten-Dance (Standard and Latin) for the years 1992 to 1993." The significance and importance of the above awards in Greece, however, are not self-evident. The petitioner offers no further evidence demonstrating that the above awards resulted in the beneficiary's national acclaim throughout Greece.

The petitioner also submits a letter from [REDACTED], President of the United States Imperial Society of Teachers of Dancing. Her letter states that at the North American Championships in Cherry Hill, New Jersey, the beneficiary "placed 2nd in the Rising Star Division and 3rd in the Championship" in 2000. The petitioner, however, has not provided information explaining the precise distinction between the "Rising Star Division" and the other levels of dance competition. The term "Rising Star" seems to suggest a lesser level of competition.

This criterion requires documentation establishing that the beneficiary's awards enjoy significant national or international recognition. The record contains no contemporaneous first-hand evidence of the beneficiary's actual receipt of awards described above. Furthermore, the record contains little, if any, specific details about the above dance competitions (such as the number of entrants in the beneficiary's category). It must be emphasized that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. We note, for example, the absence from the record of major national or international media coverage regarding the beneficiary's receipt of the above-mentioned prizes and awards. The petitioner cannot demonstrate the beneficiary's eligibility under this criterion by submitting witness letters that offer only brief, limited information about the beneficiary's recognition.

The petitioner submits a certificate from the United States Dance Sport Championships commending the beneficiary for “becoming a grand finalist” in the 2000 competition. The petitioner offers no evidence that the beneficiary ultimately won this competition. Other documents in the record (such as the numerous competition validations hand-written on pre-printed forms) and witness statements confirm the beneficiary’s participation at several dance competitions where he qualified as a finalist. For example, the petitioner submits a letter from Cher Rutherford, former United States American Style Open Champion, stating: “I have been a judge at many of the U.S. Regional competitions where [the beneficiary] has placed as a finalist.” While it is certainly recognition of one’s talents to be selected as finalist, the regulation clearly requires the receipt of a nationally or internationally recognized “prize or award.” Cher Rutherford’s letter refers to “regional” competitions in which the beneficiary participated. It should be noted that awards from local or regional competitions, such as the Eastern U.S. Ballroom Championships, cannot satisfy this criterion.

This criterion, like all of the criteria, is intended to separate the beneficiary from the majority of professional dancers. We cannot ignore information provided by the petitioner that describes the recognition received by Forrest Vance, a witness who refers to the beneficiary as his “student.”

In his distinguished 16-year career, Vance has been named U.S. Dance Champion five times (the only person to win five consecutive U.S. titles); the Canadian Ballroom Champion four times; and the Triple Crown winner three times. In addition to winning all State and Regional Championships for four years, Vance is an eleven time winner of the Fred Astaire National Championships.

The petitioner submits no evidence showing that the beneficiary has received any such comparable recognition.

The beneficiary’s alleged receipt of various awards as a dancer is not the only factor to be considered in determining his eligibility under the classification sought. While it is not clear whether significant awards exist for dance instructors, nationally or internationally recognized prizes or awards won by the beneficiary’s students can be considered as comparable evidence for this criterion under 8 C.F.R. 204.5(h)(4). The petitioner, however, submits no evidence confirming that any of the students regularly coached by the beneficiary have won national or international dance titles.

The petitioner submits two awards from Fred Astaire Franchised Dance Studios for “Male Earned Income” (fifth place) and “Top Studio Award” (second place). These awards, from the organization that granted the beneficiary franchise rights, are institutional, rather than national in scope. Furthermore, they appear to be awards for business-related performance rather than for dance expertise.

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 submits proof of the beneficiary's membership in the National Dance Council of Greece and the National Dance Council of America.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that judges membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation.

The record contains no evidence listing the councils' specific membership requirements, such as the fulfillment of certain criteria or election by nationally recognized dance performers. Furthermore, there is no indication that membership decisions are made at the required national or international level, rather than at the local level.

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.

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submits competition results from the Eastern U.S. Championships allegedly appearing in *Dance Beat* in 2000. The beneficiary's name is listed among sixty or so other event participants. The petitioner also submits a photograph of the beneficiary published in *Swarovski* in 1999. The caption under the photograph does not even identify the beneficiary. The petitioner

submits a third newspaper/magazine clipping entitled "Eastern U.S. Championships" that devotes only three sentences to the beneficiary and his dance partner. Over thirty other dancers are similarly mentioned in the same article. The publication featuring the article, allegedly dated July 2000, has not been identified as required by the regulation.

The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that barely even mention the alien cannot satisfy this criterion. The published pieces submitted only briefly mention the beneficiary or post his name among the dance competition results. Involvement in a dance competition that, as a whole, merits media coverage does not satisfy this criterion. Furthermore, it has not been shown that the above publications qualify as major media. The extent of the publications' circulation, a key factor in determining whether they qualify as major media, has not been provided. The petitioner has not demonstrated that the beneficiary has captured sustained attention from major national media such as magazines like *Sports Illustrated*. It is important to note that the beneficiary's career began in the 1980s. Such a limited submission of articles from a dance career spanning almost two decades is hardly indicative of sustained national or international acclaim.

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.

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher (including graduate student teaching assistants), professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, a petitioner must demonstrate that the alien's sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level. For example, judging a national dance competition carries greater weight than judging a statewide competition.

According to counsel, the beneficiary has "offered coaching to dance teachers and advanced ballroom dancers." The beneficiary's instruction of students and teachers at his dance school, however, does not carry sufficient weight to satisfy this criterion. Such job-related duties are not unusual for an experienced dance instructor. We note that several of the petitioner's witnesses, such as Cher Rutherford and David Hamilton, indicate that they have judged dance competitions at the national level. The petitioner, however, offers no evidence showing that the beneficiary has ever judged national or international dance competitions.

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

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the

organization or establishment. The record contains little documentation detailing the beneficiary's specific "part-ownership" role at a Stamford, Connecticut dance school, and no evidence of his school's national or international renown. The petitioner has not submitted evidence to demonstrate that the beneficiary's dance school has earned a distinguished reputation when compared to the numerous other successful dance studios throughout the United States. For example, the petitioner has not shown that dancers training at beneficiary's school win national titles more frequently than those trained at other schools.

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

The petitioner submits contract terms regarding the beneficiary's future compensation as a director of dance and training (based on studios not yet in operation). No documentary evidence has been submitted showing that the beneficiary has actually commanded a high salary or compensation in relation to other dancers/instructors. For example, the petitioner has not provided the beneficiary's tax returns or information regarding the salaries of the most experienced and well-known professional dancers/dance instructors in the field.

Beyond the above criteria, the petitioner submits several brief witness letters. Pierre Dulaine, Director of the American Ballroom Theater Company, states: "[The beneficiary] is a superb Latin dancer and has consistently placed as a finalist in the professional competitions." Cher Rutherford, former United States American Style Open Champion, and Chantal LeClerc, Former Two-Time Canadian Ten Dance Champion and coach of beneficiary for five years, confirm this assertion. While it is certainly recognition of one's talents to qualify as a finalist in a professional competition, the evidence does not reflect that the beneficiary has ever won a major national dance title since coming to the United States in 1994.

A number of witnesses have asserted that the beneficiary is a "leading Latin dancer," and that his instructional services are sought after. Other witnesses simply confirm that the beneficiary is an experienced and talented professional dancer and instructor. Vincent Bulger, President of Fred Astaire Dance Studios (a company having franchise agreements with the beneficiary), states that he considers the beneficiary to be a dancer of "extraordinary ability." However, letters alone cannot suffice to establish the beneficiary's eligibility under this highly restrictive visa classification. The statute calls for "extensive documentation," a demand reflected in the regulatory criteria, which call for a variety of types of evidence. If the petitioner fails to submit direct evidence of the beneficiary's sustained acclaim, it cannot overcome this deficiency by demonstrating that witnesses whom the beneficiary has selected consider him famous. Such attestations cannot meet the extremely high threshold of extraordinary ability.

David Hamilton, 1995 American Smooth Champion, indicates that the beneficiary "has a promising career ahead of him." Such a claim only supports the director's conclusion that the beneficiary has not yet reached the top of his field. The assertion that the beneficiary has a

promising future cannot establish eligibility, for the regulations clearly call for evidence that the beneficiary already enjoys major success and acclaim.

Forrest Vance, five-time U.S. Dance Champion, states that the beneficiary has been a “student” of his since coming to the United States in 1994. Reputation by association cannot suffice to establish that the beneficiary himself enjoys national or international acclaim. While the beneficiary has attracted favorable attention from several prominent dancers, simple comparison of their achievements with those of the beneficiary shows that the beneficiary has not amassed a record of accomplishment that places him at or near the top of his field. The achievements of Pierre Dulane, Charles Penatello, David Hamilton, and Forrest Vance appear to dwarf those of the beneficiary.

The petitioner in this case has submitted letters from impressive experts whose opinions are important in the field of professional dance. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

On appeal, the petitioner submits copies of several documents previously submitted and a letter from the American Guild of Musical Artists stating that the beneficiary “appears to meet the standard of distinction set forth in 8 C.F.R. 214.2(o).” A consultation is required for a non-immigrant O-1 petition, but is not required in this proceeding. Throughout this proceeding and again on appeal, counsel has cited the approval of an O-1 nonimmigrant visa petition as evidence that the beneficiary has already been found to be an alien of extraordinary ability in the arts. Extraordinary ability in the arts in the nonimmigrant context means distinction, which is not the same as sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes nonimmigrant O-1 criteria less restrictive for a beneficiary in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act.

For the reasons discussed above, the record is ambiguous regarding the beneficiary’s acclaim in his native Greece, and it contains no evidence that the beneficiary has sustained whatever acclaim he earned in Greece since his 1994 arrival in the United States. The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence which the petitioner may submit, but it does not follow that every dancer who has participated in national competitions, or who has earned the respect of his colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This

classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that 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. The petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria which must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the beneficiary has distinguished himself as a dancer/dance instructor 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 beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.