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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: EAC 00 068 50063 Office: Vermont Service Center Date: MAY 06 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in 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 Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a ballet dancer and teacher. 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, she 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 received a certificate and medal at the Fifth New York International Ballet Competition, held in 1996. The certificate states only that the petitioner "participated" in the competition, and there is no inscription visible on the photograph of the medal in the record. There is no evidence that the petitioner won any actual prize or award at the competition. We cannot conclude that the petitioner's very participation is tantamount to a prize or award.

Counsel states that the petitioner was a "Special Diploma Recipient of the Tokyo International Ballet Company" and won Fourth Place at the Perm Arabeska International Ballet Competition. The record contains no documentation from the Tokyo company or from the organizers of the Perm Arabeska competition to clarify or confirm these claims. Some witnesses refer to the Perm Arabeska competition but they themselves claim no direct connection to the event, so their statements cannot be said to constitute documentation of the petitioner's receipt of the claimed prize. Likewise, counsel asserts that the petitioner's participation in the La Boul Ballet Festival in France is, itself, a prize or award. Even if participation were a prize or award in its own right, the record contains nothing from the festival's organizers, nor any other direct evidence to confirm or show the extent of the petitioner's participation.

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.

Counsel states that the petitioner's "performances were televised to critical acclaim numerous times in the United States" and that "[m]any of her performances have also been reviewed by some of the nation's most prominent newspapers." The evidence list submitted with the petition indicates that a videotape was among the initial exhibits. That tape is not currently in the record. We can state, however, that the record contains no documentation to show that the televised performances were national or international, or that they were critically acclaimed. Many of the articles submitted with the petition are clippings that do not identify the source publication. The burden is on the petitioner to show that the publications are, in fact, "some of the nation's most prominent newspapers."

Most of the reviews and articles appeared in the News Journal, a local newspaper published in Wilmington, Delaware. Considering that it is hardly unusual for local newspapers to print reviews of local dance performances, reviews of this kind cannot suffice to establish sustained national media attention. Even then, many of the reviews mention the petitioner only briefly, while others do not identify her at all. These articles cannot be said to be about the petitioner, nor do they establish that the petitioner is a well-known ballet dancer outside of Delaware.

An article in the New York Times, reporting the New York International Ballet Competition, mentioned the petitioner. Counsel quotes a sentence, mentioning the petitioner, from this article. The quoted sentence is in fact the only mention of the petitioner in the article, and the mention seems less significant when placed in the context of the sentences that follow it: "Will the exquisite [the petitioner] and her partner . . . from Mongolia dance their way to a gold medal? Or will it be

the couple from Brazil, Macedonia, the United States or Russia? The dancers have been in New York since June 3 taking class together. . . ." The point of the paragraph seems to be to show the international character of the competition, rather than to spotlight the petitioner.

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

The petitioner submits several witness letters. [redacted] artistic director of the Delaware-based Russian Ballet Theater (with which the petitioner danced for two years), states that the petitioner's "beautiful Russian classical training, malleable body and extraordinary line make her a joy to behold on stage. Her clean impeccable technique, her spritely [sic] jump and precise positioning make her a wonderful asset to our company."

[redacted] artistic director of Splinters and Shards, Inc., asserts that the petitioner's "ability as a ballet teacher and her ability to guide and teach the young dancers is the most important quality that makes an invaluable asset to the dance community of the United States. [redacted] asserts that the petitioner's skill as a dancer is evident considering the companies with which she has worked, and that she graduated from the Vaganova Ballet Academy in St. Petersburg, Russia, which also produced such well-known dancers. [redacted] The fact that the petitioner attended the same school as these individuals does not demonstrate that sustained acclaim is an inevitable or automatic result of attendance there. The petitioner must show that she personally enjoys a level of recognition comparable to [redacted] and [redacted] who earned widespread fame at the top of their shared field.

Choreographer Leslie Browne states that the petitioner "is clearly a rising ballet star . . . who has made significant contributions in the field of classical dance. [redacted] pecifically lists four of these accomplishments:

1. Principal/Soloist dancer of major ballet companies;
2. Special Diploma Recipient of the Tokyo International Ballet Competition;
3. Fourth Place Winner, Perm Arabeska International Ballet Competition;
4. Participant of the Fifth New York International Ballet Competition and La Boul Ballet Festival.

Prizes and principal roles fall under other criteria. It would be redundant, therefore, to hold that such prizes and roles are self-evidently also contributions of major significance. Certainly, a major contribution could result in a prize, or one could make a major contribution in the course of performing in a leading role, but more explanation is necessary to show how a given activity by the petitioner has been recognized nationally or internationally as an artistic contribution of major significance. The record shows th [redacted] choreographed a production in 1996 for the Russian Ballet Theater, while the petitioner was dancing with the company.

Choreographer [redacted] artistic director of Stars of American Ballet, states that the petitioner "is undoubtedly a rising star in the US ballet community," whose performances in principal roles have been "highly acclaimed." [redacted] states that, having watched the petitioner's performances, he "can testify that she possesses an extraordinary talent as a

performer and dancer in the field of ballet." [redacted] discusses some of the evidence of record but does not specifically identify any particular contribution by which the petitioner has gained the acclaim of the national or international ballet community. [redacted] states that the petitioner will benefit the U.S. through her teaching work, but he does not state how, if at all, the petitioner has already earned national or international acclaim as a ballet teacher.

The letters show that those who have worked with the petitioner admire her talents, but they do not demonstrate that the petitioner has made specific contributions to her art form that are widely held to be of major significance.

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 performed in numerous ballets throughout her diverse career as a dancer," playing principal roles in such well-known ballets as The Nutcracker and Swan Lake. The petitioner has also choreographed ballet and folk dance performances. The list provided by counsel, however, does not even identify the venues or dance companies, let alone establish that they have distinguished reputations. Performing a lead role, or serving as a choreographer, for an obscure or strictly local ballet company does not establish acclaim.

Among the ballet companies with which the petitioner has worked, the record lists the Russian Ballet Theater and the National Ballet of New Jersey. The Russian Ballet Theater, based in Delaware, has attracted coverage in newspapers in and around Delaware but there is no indication that this group enjoys a distinguished reputation at the national or international level. One witness specifically referred to the troupe as a "regional company." The petitioner's guest performance with the National Ballet of New Jersey took place at a high school in Voorhees, New Jersey. Programs and other documentation from the petitioner's performances do not establish that the petitioner has played with the nation's best-known ballet companies or at venues with a national profile.

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

Counsel states that the petitioner satisfies this criterion, but does not provide evidence of box office receipts or sales of recorded media. Instead, counsel simply lists the petitioner's performances. The overall reputation of a well-known ballet does not guarantee the commercial success of a given production of that ballet.

One witness states that "millions of people in the United States and the former Soviet Union" watched the petitioner's televised performances. The petitioner submits no direct evidence, such as ratings figures, to show that the programs attracted millions of viewers. If no such evidence exists, then there is no reasonable basis to make such a claim. Even if a television station's broadcast range includes millions of potential viewers, that does not establish or imply that those viewers were watching television at all, let alone watching the petitioner's performance instead of other programming.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner submits additional exhibits and arguments from counsel. Counsel asserts that the petitioner "has achieved a highly competitive scholarly level in her field, by which several noted ballet artists have followed suit." Counsel refers here to the petitioner's graduation from the prestigious Vaganova Institute. As noted above, the school's reputation cannot establish acclaim. The fact that admission is competitive does not imply that those who are accepted become celebrities as a result of their admission. The paramount consideration is what the petitioner has accomplished in her own right, rather than how or where she learned how to do it. While prestigious schools may produce a disproportionate number of prominent figures, individual artists must earn their own acclaim rather than simply demonstrating their academic pedigree.

Counsel then contends that the petitioner "has achieved significant recognition internationally for her excellence in her field of endeavor," and that the petitioner "has performed in Russia, France, Mongolia, Japan and the United States with great success." The record contains almost no documentation regarding her activities outside of the United States, and 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). The record contains no evidence at all, for instance, regarding any performance by the petitioner in Japan.

Counsel argues that the petitioner has performed leading and critical roles for distinguished establishments because the petitioner "was principal dancer with the [redacted] in New Hampshire, the Russian Ballet Theater of Delaware and . . . has also been a guest artist with the Pennsylvania Ballet and New Jersey National Ballet Companies." Counsel asserts that, with the Pennsylvania Ballet, the petitioner "performed . . . at the acclaimed Kennedy Center in Washington, D.C. under the direction of George Balanchine, notably the world's foremost contemporary choreographer in the world of ballet."

The Kennedy Center production took place on September 20, 2000, nearly a year after the petition's December 1999 filing date. Thus, even if the petitioner suddenly gained worldwide recognition as a result of her performance there, such recognition would not retroactively demonstrate that the petitioner enjoyed such acclaim when she filed the petition. See 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. We note that the production took place on three consecutive nights, but the petitioner participated in only one performance. The petitioner's name is not among the top-billed names of the featured artists, but rather in an alphabetical listing at the bottom of the credits, and therefore there is no indication that the petitioner's role was leading or critical in nature.

We do not dispute counsel's characterization of [redacted] as perhaps the 20th century's greatest choreographer, and the program from the performance does state that the production utilized [redacted] choreography. The program goes on, however, to say that the piece, Serenade, was "the first ballet that [redacted] choreographed in this country" and that its first performance was in 1934. Also, the petitioner could not possibly have "performed . . . under the direction of [redacted] at the Kennedy Center in September 2000 as counsel asserts.

George Balanchine died on April 30, 1983, when the petitioner was eight years old. This major discrepancy demonstrates why we cannot accept counsel's claims in place of first-hand documentary evidence. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

While the petitioner was a soloist or featured performer at other productions at other venues, the petitioner has not shown that any of these events had a profile approaching that of the Kennedy Center event (in which her role appears to have been a minor one). There is no evidence that the petitioner was involved with the Pennsylvania Ballet until several months after she filed the petition.

The remainder of the petitioner's submission consists of articles from newspapers of undetermined circulation. One piece is nothing more than a photograph with a two-sentence caption, identifying the petitioner and the others in the photograph. The other article announces a then-upcoming production by the National Ballet of New Jersey. The article mentions the petitioner only in the course of identifying the dancers who participated in the production.

When the director requested the submission of further evidence, the director plainly informed the petitioner that "all documentation requested should be submitted together." Nevertheless, after submitting the above material, the petitioner, through counsel, submitted a further witness letter. [redacted] artistic director of the Pennsylvania Ballet, states "[f]rom 1997 to the present, [the petitioner] has worked under my direction as artistic director." This assertion is not consistent with evidence in the record showing that the petitioner worked in Delaware, New Hampshire and New Jersey between 1997 and the filing date at the end of 1999. There is no direct documentation of the petitioner's work with the Pennsylvania Ballet prior to 2000. [redacted] discusses the petitioner's experience in the U.S. and abroad, but he does not explain how he has the direct knowledge necessary for him to credibly attest to the petitioner's work in, for instance, Russia and Mongolia.

The director denied the petition, stating that the petitioner's evidence is not consistent with sustained national or international acclaim. Counsel, on appeal, reiterates many of the petitioner's initial claims, but submits nothing that would directly substantiate any of these claims. The only evidence submitted on appeal consists of a witness letter, copies of newspaper articles, and a copy of an appellate decision from 1994. Counsel refers to the appellate decision as a "precedent opinion," although there is no evidence that this opinion was published as a precedent decision. Unpublished appellate decisions have no force as precedent and thus are not binding with regard to unrelated proceedings.

The newspaper articles are from such publications as the Burlington County Times and the County Bell, subtitled "The Newsletter of the Burlington County Division of Cultural & Heritage Affairs." These publications appear to be local papers rather than nationally circulated "major media" as the regulation requires. Another publication appears to be entitled Dancer. The record

contains no information about this publication. The article in Dancer mentions the petitioner only once, and it was published in July 2000, well after the December 1999 filing date.

The letter is from [redacted] who identifies himself as an accomplished dancer and instructor. He states that the petitioner "has shown a great professionalism and skill as a classical ballet dancer" and asserts that the petitioner's catalog of past performances "certainly confirms [the petitioner's] statute [sic] as a performer par excellence that achieved both international and national recognition for her performances before millions of ballet aficionados, both in [the] former Soviet Union and the United States [redacted] oes not cite a source for the claim that "millions" of people have watched the petitioner's performances, nor does he indicate that the petitioner was a featured performer in any nationally televised appearances.

Counsel argues that [redacted] nd other witnesses are widely acclaimed experts in the field, and therefore their assertions regarding the petitioner's ability carry great weight. Even if the petitioner had submitted letters from the world's most famous ballet dancers, such as [redacted] she could not establish eligibility simply by showing that those dancers think highly of her abilities. Rather, the petitioner must show that she has earned widespread acclaim comparable to that of the witnesses themselves. Even then, it is not clear that the petitioner's witnesses are in fact major international authorities. Counsel claims they are, but counsel has made other claims that are unsupported or demonstrably false (e.g., that the petitioner worked under the direction o [redacted] some 17 years after [redacted] leath).

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 a ballet dancer or teacher 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.

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

[redacted]

File: EAC 00 112 52184 Office: Vermont Service Center Date: MAY 06 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:

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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 rejected.

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 as a financial analyst. The director determined the petitioner had not established the sustained national or international acclaim necessary for the beneficiary to qualify for classification as an alien of extraordinary ability.

8 C.F.R. 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

8 C.F.R. 103.3(a)(2)(v) states:

> *Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by counsel for the petitioner, but rather by the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected.

ORDER: The appeal is rejected.