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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: EAC 00 054 53356 Office: Vermont Service Center Date: 28 MAY 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:



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.

In this decision, the term "prior counsel" shall refer to Niles Lang, 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 athletics. The petitioner seeks employment as a master teacher of the Gyrotonic Expansion System, or Gyrotonics. 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

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(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 achieved sustained national or international acclaim are set forth in Service regulations 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, international 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 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;
- (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 specification 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.

In a letter submitted with the initial filing of the petition, prior counsel has stated:

[The petitioner] fulfills at least the following requirements of the ten listed by the INS regulations as acceptable for classification [as] an Alien of Extraordinary ability.

- 1) He has more than ten years experience in Gyrotonics and the related field of dance;

- 2) He possesses the equivalent of a Bachelors degree in movement from an accredited American University;
- 3) He is one of three master-teachers;
- 4) As a master-teacher he is responsible for training and judging other instructors;
- 5) He is routinely cited as the United States authority on the Gyrotonic Expansion System.
- 6) He is highly compensated relative to others in his profession.

Only two of the above six assertions (numbers 4 and 6) have any discernible relationship to any of the ten criteria set forth at 8 C.F.R. 204.5(h)(3). Others, such as the petitioner's length of experience and his bachelor's degree, do not pertain to any of the regulatory criteria. Counsel addresses several of the actual criteria on appeal, and we will discuss the criteria in that context.

Much of the initial submission consists of testimonial letters from dancers and athletes who have benefited from the petitioner's services as an exercise instructor, and a chiropractor who has studied under the petitioner. These anecdotal letters help to establish that the petitioner is a competent instructor who, like many instructors, has provided useful services to his clients, but they do not establish or imply that the petitioner is among the best-known such instructors in the United States or elsewhere. While some of the witnesses tell of surprising improvements, which they attribute to the petitioner's work, there is no evidence that these achievements have commanded national or international attention. Some of the witnesses writing these letters are, themselves, highly accomplished in their respective fields, but their reputations do not demonstrate or imply that the petitioner himself enjoys a comparable reputation. The regulations do not allow for acclaim by association.

The record contains letters from cyclist [REDACTED] whose ability to walk was seriously impaired following a cycling accident and related surgery. These letters are not addressed to the Service, but rather to act [REDACTED] and to an official of a health care company in Alabama. Prior counsel states that [REDACTED] credits the petitioner for her "miraculous recovery (her improved gait)." [REDACTED] six-page letter to [REDACTED] does not mention the petitioner or Gyrotonics even once. Instead, [REDACTED] repeatedly identifies two physical therapists, one of whom was employed by the Alabama health care company [REDACTED] states that this therapist, not the petitioner, "changed my life. . . . I'm not sure why what he did worked. . . . My gait is much closer to normal." [REDACTED] concludes her letter with a section headed "Names Mentioned, For Reference." She lists eight names, including those of her two therapists, but not the petitioner's name.

The record contains a copy of another, unsigned letter, dated two years after [REDACTED] letter to [REDACTED]. The unidentified writer of this letter may be [REDACTED] judging from similar experiences related in the letters and the style in which the letters were written. The writer thanks the petitioner for his efforts, but it is plain from [REDACTED] 1996 letter to [REDACTED] that the bulk of her improvement had come about before she started working with the petitioner. In any event, it remains that anecdotal case histories such as [REDACTED] do not establish national acclaim. The language of the statute and regulations quite clearly require such acclaim, and

therefore it cannot suffice for the petitioner simply to show that his clients and associates believe him to be extremely good at what he does.

The petitioner submits promotional materials relating to the Gyrotonic Expansion System. These materials say nothing about the petitioner individually. We cannot infer that these materials establish that those trained in the system have earned sustained acclaim. The petitioner also submits a copy of an article from Newsweek relating to "weekend athletes and the perils of middle age." This article does not even mention Gyrotonics, let alone the petitioner.

██████████ who invented the Gyrotonic Expansion System, states "[t]here are more than 600 Gyrotonics instructors in the world. [The petitioner] has certified 182 of them." The numeral "182" is handwritten into a blank space in the otherwise computer-printed letter, indicating that the letter was prepared before its author knew how many instructors the petitioner had certified. Mr. Horvath states:

[The petitioner's] talent comes in his phenomenal diagnostic ability combined with his keen insight into human kinetics and biomechanics. [The petitioner] was a professional dancer for ten years. I have teachers who have [taught] under me for twenty years who never reach the level that [the petitioner] virtually "assumed" almost immediately upon initiating his studies at Gyrotonics. . . .

[The petitioner] has reached the top of this profession. While the global population continues to age Gyrotonics becomes increasingly important in the containment of health care costs. [The petitioner,] as one of the three certifying teacher trainers worldwide becomes ever more so critical in allowing our population to age with dignity.

(Emphasis in original.) 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 a letter showing that he appeared on the Fox Morning News on January 2, 2001. The letter confirming this appearance ██████████ indicates that the appearance was local rather than national in nature: "[t]his program is routinely viewed by many thousands of residents of the Washington metropolitan area, most of whom are undoubtedly unfamiliar with this new form of physical training." ██████████ assertion that most Washington-area viewers "are undoubtedly unfamiliar" with Gyrotonics suggests that the method itself has not yet achieved national recognition, in which case it is extremely difficult for the petitioner to have achieved national acclaim as an instructor of that method. Also, the petitioner's January 2001 television appearance took place over a year after the petition's December 1999 filing date, and therefore it cannot retroactively establish that the petitioner was already eligible at the time he 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.

Another piece of evidence which came into existence too late to establish eligibility is an article in the "Health & Fitness" section of The Detroit News, published on March 28, 2000, over three

months after the petition's December 1999 filing date. While the petitioner's name and photographs of him appear in the article, the article's main focus is on Gyrotonics in general rather than the petitioner's reputation. The article indicates that Gyrotonics "is growing like mushrooms across the country, and has just become accessible in Metro Detroit," and that the petitioner "is training instructors in Gyrotonics at the Equilibrium studio in Bloomfield Hills," a Detroit suburb.

██████████ an official at Equilibrium, states that "[i]n March of 2000 [the petitioner] worked at our studio for three weeks as a Master Trainer to introduce the Gyrotonic Expansion System to our clients and to conduct the GXS Level 1 Training for a small group of our senior teachers." ██████████

██████████ asserts that the petitioner "and his GXS work [were] the subject of a lengthy television feature on Fox 50." The record contains no documentation from the television station to provide further details about what appears to have been a purely local broadcast.

The above information from Detroit and Washington demonstrate that, while Gyrotonics is growing in the United States, this growth is still at such an early stage that some major U.S. cities were only just being introduced to Gyrotonics in 2000 and 2001. This evidence does not provide strong support for the claim that the petitioner had earned a national reputation by 1999.

The petitioner also submits a letter from acclaimed actress ██████████ whose successful career on Broadway followed a number of major motion pictures. ██████████ states that she first met the petitioner while she was performing in the title role in Annie Get Your Gun. She asserts "[s]tudying with [the petitioner] helped me stay in the shape I needed to be in to sustain the demands of the show, plus it helped incredibly with the breath control I absolutely needed." Ms. Peters adds that she has "never met anyone with the amount of knowledge and instructional expertise of what the body can do as [the petitioner]."

The director denied the petition, stating that a satisfied client base does not constitute sustained national or international acclaim. On appeal, counsel asserts that the petitioner has satisfied five of the ten criteria set forth at 8 C.F.R. 204.5(h)(3).

*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 satisfies this criterion through his aforementioned media coverage, as well as a newly submitted article from the January/February 2001 issue of Ace Fitnessmatters. None of this media coverage had taken place prior to the petition's filing date, and therefore for reasons already explained it cannot establish eligibility. Furthermore, the media coverage in Detroit and Washington appears to have been strictly local in nature, meaning that the article and television stories would not have made the petitioner known outside of the Detroit and Washington areas. Regarding the Ace Fitnessmatters article, the record contains only the first page of this article, and nothing at all to establish that the publication represents major national or international media. The fragment of the article in the record discusses Gyrotonics but does not mention the petitioner.

*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.*

As a master teacher of Gyrotonics, the petitioner is qualified to train and certify other teachers. [REDACTED] has stated that he and the petitioner are two of only three master teachers in the United States. Subsequent evidence indicates that, by the time of the appeal, that number had grown to ten. The record indicates that [REDACTED] personally selects and certifies the master teachers of his method. As noted above, Gyrotonics is still at a very early stage of its growth in the United States, with major cities such as Washington and Detroit becoming acquainted with the technique only after the petition's filing date. While acting as a master teacher would, in the normal course of activity, involve evaluating the abilities of others, such judging would not be at a national or international level, and selection as a judge by a single person does not appear to show that such selection is a reflection of the petitioner's own national or international acclaim.

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

Counsel states that the petitioner has satisfied this criterion, but counsel does not identify any specific contributions of major significance. Instead, counsel asserts that three witness letters in the record establish the petitioner's contributions. One of these letters, already discussed, is signed by Juliu Horvath; the other letters are from other Gyrotonics instructors. These letters establish that the petitioner has been one of [REDACTED] most impressive students, but it shows no original contributions. While the exercise system may be an original contribution by [REDACTED] the petitioner's ability to learn and then teach a system invented by someone else is not an original contribution.

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

Even if we consider the Gyrotonic Expansion System to be an organization or establishment, the petitioner has not established that Gyrotonics had a distinguished reputation as of the petition's filing date. As we have already observed, if Gyrotonics itself was not nationally known in December 1999, then the petitioner could not gain national acclaim through Gyrotonics as of that date.

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

Prior counsel initially stated that the petitioner "is highly compensated relative to others in his profession" but the record contains no documentation to establish the petitioner's remuneration, or that of others in his field. The petitioner asserted on the Form I-140 petition that he earns \$2,000 per week. Counsel, on appeal, states "we submit that petitioner's earnings as a Master Teacher exceed \$10,000 per month while non-Master Teachers earn between \$4,000 and \$5,000 per month." The petitioner submits no evidence to support these claims. 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). 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). Furthermore, superiors routinely earn more than their subordinates, and therefore a comparison solely between the petitioner (a master teacher) and others of lower rank is of little value. The petitioner has not shown that his pay is significantly high for a master teacher, and we cannot accept the implied assertion that the rank of master teacher is, itself, inherently an indication of extraordinary ability.

Counsel cites three court cases in support of the appeal, concerning two hockey players and a physician. Counsel provides no detailed argument to explain why these cases support the present appeal. Counsel states only “[t]he physician . . . and the hockey players . . . were not the best in their field in the world. But they, as the petitioner here, were outstanding in their field.” It cannot suffice for counsel simply to name three court cases; the burden is on the petitioner to establish the petitioner’s eligibility, to overcome the director’s specific findings, and to establish the specific relevance of the cited cases. Counsel does not submit copies of the judicial rulings or any documentation pertaining to the court cases or the records of proceeding relating thereto; counsel states only that the cases are similar and therefore the outcome should be the same. The director did not state, as counsel implies, that the petitioner must be “the best in [his] field in the world,” but the statute and regulations plainly require sustained acclaim at a national or international level. The petitioner cannot meet this burden simply by demonstrating a satisfied client base that is, for the most part, confined to the metropolitan New York area.

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 Gyrotonics 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 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.