



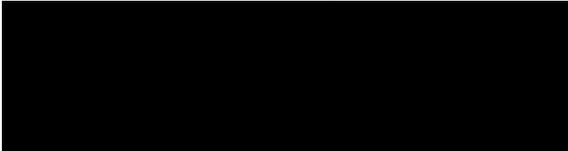
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U.S. Department of Justice

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-01-225-58721

Office: Vermont Service Center

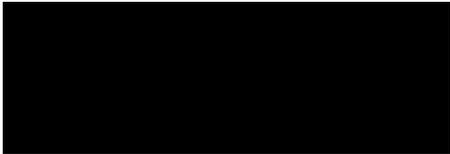
Date: OCT 01 2002

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



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 athletics. The director determined the petitioner had not established the beneficiary's 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a dance instructor and ballroom dancer. 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 that, it 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 director concluded that the petitioner had not established the significance of the competitions in which the beneficiary won awards. On appeal, counsel asserts that while some of the awards were obtained in children's competitions, the director ignored the higher level national awards.

In the early 1990's, the beneficiary competed in several "C" and "D" class competitions in Russia. Several of the competitions were regional and some of the rankings were below third place. In 1996, the beneficiary competed in three "A" and "M" class competitions, at least some of which were national, winning first place in both classes at a national competition in July of that year. In 1997, the beneficiary won third place in an "A" class national competition and third place in both "A" and "M" classes at a regional competition.

On appeal, the petitioner submits a letter from Olga Foraponova, the undefeated American Ballroom Champion for 1997 and 1998, World Show Dance Finalist in 1997 and 1998, United States Professional Open Standard Finalist in 1996, and Russian Professional Latin and Standard Finalist in 1988 through 1992. Ms. Foraponova asserts that "C" and "D" classes are children's competitions, "B" class is the first stage of professional dance, and that advancement to "A" class "is achieved through a series of tests."

Counsel lists several prizes in 1998 and 1999, none of which are documented in the record. In 2000, the beneficiary was ranked fourth and sixth in a regional and a national competition, which cannot be considered awards. During that year, the beneficiary was also ranked third at the North American Championships in New Jersey. The evidence from the North American Championships reveal that the beneficiary competed in the Open International Latin competition, as opposed to the Bronze, Silver or Gold International Latin competitions. As such, it is not clear that she competed against those at the top of the field at this event. Counsel also indicated that in 2000 the beneficiary was ranked first at the [REDACTED] in Washington D.C., third at the Constitution State Challenge [REDACTED] in Connecticut, second at the New Jersey State Open Championship, and third at the Ohio State Ballroom Championships. The assertions of counsel do not constitute evidence. Matter of Ohaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner initially submitted no evidence regarding whether these competitions are regional or national, or the beneficiary's ranking at those competitions. Counsel also listed several awards for 2001, none of which were initially documented.

In response to the director's request for additional documentation regarding the U.S. competitions, the petitioner submitted the November/December issue of *Amateur Dancers* reporting the results of the 2000 Rhode Island DanceSport Championships reflecting that the beneficiary was ranked fourth in the International 10 Dance. As stated above, rankings below third cannot be considered an award or prize. The petitioner also submitted the results of the 2000 Ohio Star Ball reflecting that the beneficiary placed third in the under 21 category. The other dancers were from New York, New

Jersey, and Canada, suggesting the competition was not entirely regional. While we agree with counsel that there is no age requirement for this classification, [REDACTED] is not limited to children and adolescents the way gymnastics competition generally is. Competing in an age-restricted category reflects that one ranks well against those with similar experience levels, but does not necessarily reflect that he or she is one of the very few at the top of the field as a whole, including the most experienced experts.

The supplemental information also reflects that the beneficiary was a semifinalist in the 2000 United States Amateur Ballroom Dancers Association (USABDA) Nationals. Reaching the semifinalist stage is simply not an award or prize.

Sergei Bezrodnov, a fellow ballroom dancer residing in New Jersey, asserts that the beneficiary has won the following additional prizes:

1. 1st place at the "Southern Russian Championships '92"
2. Winner of the "International Competition of teams '93" (Perm[i])
3. Winner of the "Moscow Open" (1991, 1997)
4. Winner of the "1996 Dance Championships of Moscow Association of Sportsdance" (Moscow)
5. Winner of the "1996 Moscow [REDACTED] Association Championships" ["ALEKO" (Perm[i])]
6. Winner of the Virginia State Championships (1998)
7. Winner of the "Baltimore-Washington Open Dance Championships" (1998)
8. Finalist of the "United States Amateur Ballroom Dancers Association 2000 National Championships."

Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Not only are these alleged awards not documented in the record, Mr. Bezrodnov's last claim is contradicted by the record which reveals that in 2000 the beneficiary only made it to the semifinalist round in the USABDA National Championships.

On appeal, counsel reiterates the initial unsupported claim that the beneficiary competed in Europe. Specifically, counsel continues to assert that the beneficiary was ranked seventh at the German Open Championships in 1994, ninth at the London Open Championships in 1995, and third in the National Dance Championships in London in 1996. On appeal, the petitioner submits evidence regarding the significance of these competitions and the competitors in 2001, but no evidence that the beneficiary received the rankings claimed. Regardless, only the alleged third place at the 1996 National Dance Championships in London could be considered an award or prize.

In light of the above, the only awards or prizes resulting from competition at the national or international level which are documented in the record, are the 1996 and 1997 first and third place rankings in Russia. The beneficiary has resided in the United States since 1998. She has not

demonstrated through awards that she has sustained any acclaim she may have enjoyed in Russia since her arrival in the United States.

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.

Counsel asserts that the beneficiary's membership on the 1993 Russian national team that competed in Permi meets this criterion. The beneficiary's membership on this team is confirmed by E. Kolova of the Russian Professional Dance Union. In 1993 the beneficiary was 14 years old and competing in "C" and "D" class competitions. The petitioner has not established that the 1993 national team of which the beneficiary was a member consisted of the best ballroom dancers regardless of age. Moreover, this membership was eight years prior to the date of filing and is not evidence of sustained acclaim.

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.

Initially, counsel stated:

[The beneficiary] has been mentioned in articles appearing in The Hartford Courant, The Fairfield County Weekly, The New Haven Register, The Stamford Advocate and Greenwich Time. Articles. [Exh. 37]. These exhibits document that published materials about [the beneficiary] have appeared in professional and major trade publications as well as in the general press.

A review of exhibit 37 reveals that these "articles" are publicity press releases for the beneficiary's performances. In response to the director's request for additional documentation, counsel further argued:

In addition to the previously submitted exhibits, [the beneficiary] has been pictured in publications such as *Amateur Dancers* and her competition successes have been cited in various professional publications. Articles. [Exhs. 40-45].

Exhibits 40-44 include the following pages from the publication *Amateur Dancers*: (1) the cover of the November/December 2000 issue which pictures numerous couples on the dance floor, one of the couples in the back is highlighted as the beneficiary and her partner, (2) the competitions results for the Rhode Island 2000 ██████████ Championship where the beneficiary placed 4th at the Dance 10 event reported in the same issue, (3) a photograph of dance patrons Gary and Diana McDonald with the six couples including the beneficiary identified as the "National Dance 10 winners" at the Rhode Island competition, (3) a "photo review" of the 2001 competition in Utah in the November/December 2001 issue including a single photo of the beneficiary and her partner, and (4) the results of the International Latin and 10 Dance competitions where the beneficiary made it to

the semifinalist round. Exhibit 45 is material from www.dancebeat.com listing the beneficiary and her partner as semifinalists in a USABDA competition.

The director questioned whether the first set of articles submitted as evidence to meet this criterion constituted professional or major trade publications in the field of dance. On appeal, counsel asserts that the director ignored the evidence from *Amateur Dancers*.

We concur with the director that the published material submitted initially does not appear to constitute major media. Moreover, brief publicity press releases are not indicative of national or international acclaim.

Regarding the materials in *Amateur Dancers*, while they may arguably appear in a professional trade publication, they are not primarily about the beneficiary. Rather, the photographs do not focus on the beneficiary more significantly than her other competitors. The articles discussing the results are articles about the competition, not the beneficiary personally. She is not singled out as particularly noteworthy among the other competitors. We do not find that the director erred in considering these materials as evidence of the beneficiary's ranking as opposed to evidence relating to this criterion.

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.

Counsel asserts that the beneficiary meets this criterion based on her experience as a dance instructor. The beneficiary has worked as a dance instructor in Moscow and more recently for the petitioner. Critiquing one's students is inherent to teaching or instructing and does not constitute judging the work of others in one's field to the extent that it reflects national or international acclaim. The record contains no evidence that the beneficiary has served as a judge at a [REDACTED] competition as many of her references have.

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

The petitioner refers to the beneficiary as an "exceptionally talented dancer" who has "achieved and sustained national and international acclaim in her field, particularly in the Latin Program." L.N. Odnolko, the principal at a Russian school where the beneficiary taught ballroom dancing, asserts that she was a talented teacher "who uses modern methods of teaching that foster interest to Dance Sport and dances of World cultures, develops sense of rhythm and emotional expression of movements." Tatiana Asarova, President of the OMELA dance school in Russia, asserts that the beneficiary is frequently asked to coach and that she has "recommended herself as a very talented instructor with great perspective." Mrs. Igonkina, the principal of Educational Complex "Sambo-70" in Moscow, asserts that the beneficiary's students receive high technical marks and that the beneficiary is "dependable, talented, hard working, and [an] enthusiastic dancer as well as teacher." A. Shishkov, president of the Telemark Dance Sport Club where the beneficiary trained, lists some of the beneficiary's awards and asserts that the beneficiary's success is due to her extraordinary

ability and lots of practice. E. Kolobova, a Russian Latin Dance champion, lists some of the beneficiary's awards and asserts that the beneficiary is "a talented dancer with tremendous potential as both a competitor and a pedagogue." Ihor Kravets, a fellow dancer, asserts that the beneficiary's dances are "full of energy, rhythm, and character" and that "she is nothing less but the favorite of all judges and audiences of all ages." Irving Farber, a retired administrative law judge and one of the beneficiary's students, provides general praise of her talent. Nella Dabran, mother of one of the beneficiary's students, also provides general praise.

Sergei Bezrodnyov, a fellow dancer, asserts that beneficiary has trained with the world's most prestigious coaches and that she is one of the "best amateur dancers in Russia, Ukraine, and now United States." Jean Marc Genereux, "a world class adjudicator, choreographer and coach for the top [REDACTED] athletes in United States and Canada," asserts that the beneficiary was a finalist in every U.S. competition she entered, an assertion not supported by the record. He further states her "talent, experience, knowledge, enthusiasm and love for [REDACTED] is a great example to all the youth dancers." France Mousseau, Mr. Genereux's wife, provides a letter with identical information.

Corky Ballas, past undefeated Latin Champion of the United States and third in the world, indicates that he has judged and trained the beneficiary. He states:

Her competitive dancing is exceptionally sound. . . . Years of excellent training are evident in her personal dancing skills and in her effect on the young competitors she teaches. She . . . clearly deserves credit for the role she plays in developing [REDACTED] [sic] competitors in her school and the Philadelphia area. Hers is a leadership role. She sets an excellent example by continuing to develop her own skills and maintain [sic] success in her competitive results. At [U]niversal [REDACTED] Center, she shares her experience and expertise with many junior competitors who follow her example.

The Internet materials indicate that Corky Ballas and his partner Shirley, won the following titles: five time United States International Latin Champions, three time United Kingdom National Champions, International & Star Champions, two time Winners of the most prestigious competition in the World - Open to the World British Championships. The director concluded:

The comments above by Corky Ballas are certainly praise of a sort. But it is the praise of a mentor with distinguished credentials commenting on an extremely promising younger colleague, who is still working to make her way to the next level of achievement. They are not the comments of a world champion speaking about a peer.

On appeal, counsel notes that Mr. Ballas was the beneficiary's coach and that every competitor has a coach. Counsel also expresses concern that by concluding that the beneficiary is not the peer of a "world champion" the director was applying too strict a standard since the regulations only require national acclaim.

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On appeal, counsel notes that Mr. Ballas was the beneficiary's coach and that every competitor has a coach. Counsel also expresses concern that by concluding that the beneficiary is not the peer of a "world champion" the director was applying too strict a standard since the regulations only require national acclaim.

We agree with counsel that international acclaim is not required for this classification. Nevertheless, insofar as the director was noting that the credentials of the beneficiary's references reflect that the top of her field is higher than the level she has attained, we concur.

Regardless, the ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. The general praise of these references does not reflect that the beneficiary has made a contribution of major significance to the field of ballroom dancing.

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

Counsel asserts that the beneficiary meets this criterion through her performances and competitions. It is inherent in the field of ballroom dancing to perform and compete. Such activities are not indicative of national or international acclaim. Moreover, dance competitions do not constitute artistic exhibitions or showcases and we do not find them comparable to such events.

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

Counsel asserts that the beneficiary meets this criterion through working as an instructor for the Rockland Dance Studios, Inc., a Fred Astaire Dance Studio, and the Universal [REDACTED] Center. The record contains no evidence regarding the Rockland Dance Studio's reputation and there is no evidence that as an instructor at that studio the beneficiary played a leading or critical role for the Fred Astaire Dance Studio as a whole. Even if we concluded that Universal [REDACTED] Center has a distinguished reputation nationally, the petitioner has not demonstrated that the beneficiary, as a children's dance instructor, plays a leading or critical role for Universal above and beyond the other 15 instructors, two of whom have won "top teacher" awards based on the performance of their students.

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

In his request for additional documentation, the director expressed concern regarding the beneficiary's relatively low salary at Universal. In response, counsel provided numerous reasons for the beneficiary's low salary and noted that the petitioner had never asserted that the beneficiary met this criterion. While counsel reiterates these points on appeal, the director did not mention the beneficiary's salary as a negative factor in his final decision.

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 beneficiary has distinguished herself as a ballroom dancer 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 indicates that the beneficiary shows talent as a ballroom dancer, but is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field. 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.