

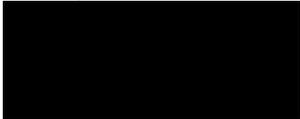


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-01-224-56691

Office: Vermont Service Center

Date: SEP 24 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 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

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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 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 he 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 soloist/principal 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). On appeal, counsel argues that the award discussed below constitutes a one-time achievement. While dancers from several countries may compete, the petitioner has not established that this is a major, international recognized award. Specifically, the petitioner has only submitted a letter from the organization that issues the award as evidence of its

notoriety. Moreover, as will be discussed below, the competition is for "promising young professional dancers."

Barring the alien's receipt of a major, international recognized 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, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The New York International Ballet Competition issued the petitioner the Lefkowitz Award for Outstanding Performance of a Solo at its fifth tri-annual competition in 1996. Eleanor D'Antuono, the artistic director of the competition, asserts that a "distinguished panel of ballet professionals" selects 24 dancers from hundreds of applications. Ms. D'Antuono continues that a nine-judge panel of international reputation chooses the finalists and that only four gold medals have been awarded between 1984 and 2000. In addition, Ms. D'Antuono states:

If the judges determine that a Dancer is of outstanding Artistic ability, the Lefkowitz Artistic Achievement Award may be presented to that dancer. There have only been FOUR winners of this award, and [the petitioner] is the only male to have earned this award.

It is noted that between 1984 and 2000, there were only six competitions. As noted by the director, however, Ms. D'Antuono further states that the competition aims to "identify promising young professional dancers," "enhance their professional education," and "provide them with career opportunities that would be difficult to achieve otherwise." She continues: "These dancers spend two weeks living and learning as a unit. They are taught and coached by a select faculty of ballet professionals." This information is confirmed by a program for the event submitted on appeal. The program further indicates that competitors perform a "Designated Repertoire" prepared prior to the competition, and an "Announced Repertoire" taught during the competition.

We concur with the director's implication that an award for which the most experienced and renowned ballet dancers do not compete cannot be considered evidence that the petitioner has national acclaim as one of the very few at the top of the field of dance. Even if we concluded that the petitioner minimally met this criterion, at very best, the petitioner can only meet two criteria for the reasons discussed below.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted reviews of the New Jersey Ballet in the Newark *Star-Ledger*, the Randolph *Harold & News*, and the Nashua *Telegraph*. In response to the director's request for

additional documentation, the petitioner submitted a letter from Robert Johnson, dance critic for the *Star-Ledger*, who asserts that the paper is one of the largest papers on the East Coast with a circulation of 605,000, the 13th largest in the country.

The director concluded that the petitioner's performances had not been reviewed in any major newspapers. On appeal, counsel challenges the director's conclusion, referencing Mr. Johnson's letter.

The evidence submitted for each criterion must be evaluated as to whether it reflects national or international acclaim. While the *Star-Ledger* may have the 13th largest circulation in the country, there is no evidence that it has a significant circulation outside of New Jersey. As such, articles published in this paper cannot be considered evidence of national acclaim. The petitioner has not submitted evidence of media coverage outside of the Mid-Atlantic/New England region.

Moreover, while the reviews do reference the petitioner favorably, they are primarily reviews of the entire performance. As such, they carry less weight than articles primarily about the petitioner.

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

The programs submitted do not reflect any leading or soloist roles. Nevertheless, the petitioner submitted a letter from Carolyn Clark, Executive Director of the New Jersey Ballet Company asserting that the petitioner has performed leading roles for that company. In addition, the newspaper articles discussed above review the petitioner's performances as the Prince in "The Nutcracker." Even if we were to conclude that the New Jersey Ballet Company has a distinguished reputation nationally, the petitioner would only, at best, meet two criteria.

Other evidence.

The petitioner also submitted reference letters that provide general praise of his talent. 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 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 soloist/principal dancer 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 indicates that the petitioner shows talent as a soloist/dancer, but is not persuasive that the

petitioner's achievements set him significantly above almost all others in his field. 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.