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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC-00-201-52477 Office: California Service Center Date: APR 08 2003

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 the beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that the Service (now the Bureau) has already determined that the beneficiary is an alien of extraordinary ability by issuing the beneficiary a nonimmigrant visa in a similar classification.

We concur with the director that an approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each case must decided on a case-by-case basis on the evidence of record. Moreover, 8 C.F.R. § 214.2 (o)(3)(iv), relating to nonimmigrant aliens of extraordinary ability in the arts, provides for entirely different criteria than those for the immigrant classification discussed below. Thus, the beneficiary could meet the nonimmigrant criteria and not the ones necessary for immigrant classification.

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 Bureau 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 ballet 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 appears to relate 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.

On her resume, the beneficiary lists the following awards:

1990	Vaganova Ballet Competition Diploma of III Degree
1993	International Festival of Classical Ballet named after Nuriyev Honorary Diploma
1996	Honorary Letter from Director of the State Kremlin Palace

The director concluded that the record contained no independent background information about these awards. The petitioner does not address this concern on appeal.

We concur with the director for the following reasons. The petitioner has not demonstrated the significance of a "Diploma of III Degree." Specifically, the petitioner has not demonstrated what awards were issued and how many of each degree were issued. The 1993 honorary diploma was issued "for participation in the International Festival of Classical Ballet." The record does not establish that this is a competitive award. Similarly, the 1996 letter is a letter of appreciation for the beneficiary's talent and input at the Kremlin Palace. It does not appear to be a competitive award.

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 submitted evidence that the beneficiary was a member of the Guild of Theater Artists of the Russian Federation from 1993 through 1997. The director concluded that the petitioner had not established the membership requirements for this organization. On appeal, the petitioner submits an unsigned statement of unknown origin that asserts that the guild requires a nomination from a member, exemplary work for three years in a nationally ranked ballet company and letters of recommendation. This unsigned statement from an unknown source is insufficient evidence of the guild's requirements. *See generally, Matter of Treasure Craft of California*, 14 I&N Dec. 190

(Reg. Comm. 1972). Moreover, it is not clear that simply performing with a nationally ranked ballet company is an outstanding achievement.

> *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 several reviews, press releases, advertisements, and programs regarding performances in which the beneficiary participated. The director noted that artistic performances are routinely reviewed and concluded that such reviews are not evidence of national or international acclaim. The petitioner does not address this concern on appeal. We will review the materials in detail below.

The petitioner submitted portions of articles about shows in which the beneficiary performed. An article in *The Independent* discussed a modern ballet performance about the life of [redacted] While the article mentions the beneficiary as a classically trained dancer who is facing the challenges of dancing modern ballet, the article is not primarily about the beneficiary. A review in the same publication includes a picture of the beneficiary, but the portion of the review submitted does not single out the beneficiary's performance. The petitioner also submitted an article in the *Santa Barbara News Press* regarding a party held by the petitioning company to promote its next season. While the beneficiary is named as attending the party, the article is not primarily about her and does not provide any information about her. An unidentified paper reviews the Los Angeles Classical Ballet's performance of the Nutcracker. While the review names the beneficiary among the international cast, it does not single her out. In fact, the beneficiary is not included in the "trio of exuberant Russian dancers" who come close to stealing the show. Nor is she identified as performing in a lead role, such as the Sugar Plum Fairy.

The petitioner also submitted a portion of an interview with an unidentified member of the petitioning company that does not mention the beneficiary by name but includes a company photograph in which the beneficiary appears. The record does not establish that this interview is with the beneficiary. Moreover, the record does not establish that the publication in which the interview appears is a nationally circulated major media publication.

The petitioner also submitted advertisements of the beneficiary's performances and workshops as well as general information about the petitioning company in the *Insider's Guide to Santa Barbara.* Press releases about the petitioning company's charity events appear in the *Montecito Journal* and the *Santa Barbara News-Press*. The press releases either identify the beneficiary as an international member of the ensemble or picture her. Neither press release is primarily about the beneficiary. Regardless, advertisements and press releases do not constitute journalistic reportage.

Further, the petitioner submitted some foreign language newspaper articles without translations. As the petitioner did not submit certified translations, it did not comply with the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) or 8 C.F.R. § 103.2(b)(3). Moreover, as stated above, typical reviews of

performances in which the beneficiary participated are not published materials primarily about the beneficiary.

Finally, the petitioner also submitted several programs. While the petitioner does not assert that these programs meet this criterion, we note that while printed, programs are not published materials primarily about the beneficiary.

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

The petitioner submitted reference letters containing general praise of her ability from [redacted] Ballet Master at the Moscow State Kremlin Palace Theater "Kremlin Ballet;" Michael Shannon, General Director and Head Choreographer for the Imperial Theater of Russia; [redacted] former principal with the Kirov Ballet in St. Petersburg and Assistant Artistic Director of the Los Angeles Classical Ballet; Marlene Hall, Co-owner of the Center State Dance Academy; Ludmila Nikulina, Director of the School of Music and Plastic Arts "Helicon;" and [redacted] Executive Director of the Yellowstone Ballet Company. While some of these references are listed in the Concise Oxford Dictionary of Ballet, their inclusion in this publication reflects that the top of the beneficiary's field is higher than the level she has attained.

[redacted] Professor of Choreography at the New Russian Humanitarian University, asserts that the beneficiary distinguished herself from others in her class while a student, but does not address her career. [redacted] Artistic Director for the Long Beach Ballet Arts Center, asserts that the beneficiary is one of the most talented ballet dancers and teachers, that she has taught up to 100 students who traveled to Long Beach from all over the United States to study with "outstanding individuals," and that she has contributed to the stature of the Long Beach Ballet Arts Center.

None of the above letters attest to a contribution of major significance. In addition, the 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.

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

Prior counsel asserts that the beneficiary meets this criterion by appearing on posters and in programs. The director did not address this argument. We find that publicity posters and programs are not artistic exhibitions or showcases. Nor are such posters and programs, prepared by every troupe in the performing arts to publicize their performances, comparable to the selection and display of a visual artist's work in a prestigious and exclusive artistic exhibition or showcase. The beneficiary's roles in the actual performances will be considered below.

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

On her resume, the beneficiary indicates that she was a solo dancer with the Perm State Academic Theater of Opera and Ballet and is currently a soloist ballet dancer with the petitioning company. While she also indicates that she danced with the Moscow State Theater "Kremlin Ballet," she does not indicate that she was a soloist or principal dancer with this group. The petitioner submits numerous reviews, programs, and letters confirming her role in various international tours. The director concluded, "the beneficiary's participation in ballet performances, appears to have been as one of a number of contemporary ballet artists." While this conclusion was part of the director's discussion of the beneficiary's awards, nowhere else does the director discuss this criterion of obvious relevance to the beneficiary's field and specifically claimed by prior counsel. The petitioner does not address this criterion on appeal. Nevertheless, the voluminous evidence relating to this criterion bears discussion.

The beneficiary submitted letters and programs evidencing her past appearances in performances by the Perm National Academic Opera Ballet Theater, the Kremlin Ballet, the Imperial Theater of Russia's Belgium tour, the Los Angeles Classical Ballet, the Long Beach Ballet Arts Center's China tour, Yellowstone Ballet Company, and the petitioning company. Further, the petitioner submitted a publicity photograph of the beneficiary allegedly from "Queen Margot" produced by Mosfilm Production in 1996. The beneficiary asserts that this was a 12-hour program aired on Russian national television, but submits little documentary support of that assertion.

While the record does not establish the significance of every role or the reputation of every company, the evidence as a whole sufficiently establishes that the beneficiary meets this criterion. She has undeniably performed in soloist and principal roles in various ensembles around the world, some of which appear to have distinguished reputations. Nevertheless, this is only one criterion. An alien of extraordinary ability must meet at least three. For the reasons discussed above and below, the record falls far short of demonstrating that the beneficiary meets any of the other criteria.

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 submitted its contract with the beneficiary reflecting compensation of $1,100 for all rehearsal and performance weeks. The record does not establish, however, that this compensation is significantly high in comparison with others in the field, including the most experienced and renowned ballet dancers.

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

Prior counsel asserted that the beneficiary meets this criterion by performing in fund raising performances with the petitioning company that account for more than 50 percent of the ensemble's income. The petitioner did not submit box office receipts as required under this criterion.

Regardless, the record does not demonstrate that the beneficiary is personally responsible for the commercial success of the fundraisers. For example, the advertising for the events do not focus on the fact that she will be performing.

While [redacted] asserts that the beneficiary's performance in "A Midsummer Night's Dream" was a key element in the tour's success, the petitioner did not submit any box office receipts to support this assertion. Moreover, without the publicity materials, we cannot determine whether the beneficiary's inclusion in the tour was responsible for its alleged success.

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 ballet 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 ballet 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.