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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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

[redacted]

FEB 28 2003

File: [redacted] Office: NEBRASKA SERVICE CENTER Date:

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)

IN BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Elizabeth Hayward
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 he has sustained national or international acclaim at the very top level.

The petitioner is a principal ballet dancer for the Colorado Ballet. Counsel quotes a witness as stating that the petitioner is "one of the top three male dancers in the world."

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, 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 petitioner won a bronze medal at the 8th Moscow International Ballet Competition in 1997. The petitioner submits a copy of a 1993 article from the *Christian Science Monitor*. The article calls the event an "Olympic-style competition," and states that "[o]f the four major international ballet competitions . . . Moscow has always been the most prestigious." The evidence indicates that the petitioner's medal qualifies as an internationally recognized prize, and thus the petitioner has satisfied this criterion.

Counsel contends that the above medal is a major international award and thus satisfies the much higher one-time achievement threshold. The Service holds that this alternative threshold, requiring only a single award, is to be interpreted strictly and used only sparingly. The regulation does not indicate that every occupation has an award that qualifies as a one-time achievement; that is, that the biggest award in a given field necessarily qualifies as a major internationally recognized award. Awards that meet this standard are universally known, even outside of the field, for instance the Nobel Prize, the Academy Award, and the Olympic medal. Indeed, the reference to the ballet competition as "Olympic-style" demonstrates the extent to which the Olympics are known; the reporter felt it necessary to explain the nature of the competition, by using the Olympics as a better-known point of reference. The petitioner has not shown that anyone has needed to explain the Olympics by comparing it to the International Ballet Competition. We note also that the petitioner apparently had to go back to 1993 to find a newspaper article describing the event and its importance, even though the quadrennial event presumably took place again in 2001, much closer to the petition's 2002 filing date. Also, it is worth noting that ballet, like most performing arts, is not generally viewed as a competitive event.

The director requested further information, stating that the petitioner has established that the award is a lesser international award, but not a major international award which would, by itself, suffice to establish eligibility. In response, the petitioner submits documentation regarding the Moscow International Ballet Competition and some of its medallists, and two new letters.

[redacted] president of the New Orleans International Ballet Conference, asserts that the competition in Moscow "is one of the most important in the world," and one of only five that are officially sanctioned by the International Dance Council [redacted] states that the competition produced several dancers who "became household words," such [redacted] Considering the acclaim and recognition these dancers have earned, it is fair to say that they stand at the top of the field, and that the petitioner's own acclaim must at least approach theirs if he, too, can be said to be a nationally or internationally acclaimed dancer at the top of the field.

[redacted] CEO and artistic director of the Colorado Ballet, states that the Moscow International Ballet Competition "is a premier event that is only held every four years. It is truly the equivalent of the Olympics for the ballet world. Past winners include the very best dancers in the world, including [redacted] The record does not show that the competition enjoys the same recognition outside "the ballet world" that the Olympic Games enjoy among non-athletes. Regarding the reference to [redacted] (who won a gold, rather than bronze, medal at the first competition in 1969), the shared award does not demonstrate or imply that every medallist at the Moscow International Ballet Competition has a reputation comparable [redacted] The petitioner has also not shown that Mr. Baryshnikov's global recognition stems mainly from his 1969 medal.

According to materials in the record from www.russianballet.ru, the official web site of the organization that conducts the Moscow International Ballet Competition, four gold medals were awarded in 1997. This information would seem to imply that at least four bronze medals were also awarded that year, but the web site does not list the winners of silver or bronze medals, evidently considering gold medallists the only ones worth listing. [redacted] states "[t]he 1997 field was particularly strong and resulted in the awarding of the "Grand-Prix" prize. This prize has only been awarded three times in the history of the Moscow International Ballet Competition." This information suggests that the "grand prix" is even more prestigious than the gold medal, which in turn ranks two steps above the bronze medal that the petitioner won. Thus, the information provided by the petitioner further undermines the assertion that his bronze medal is an award so significant that, by itself, entirely suffices to establish eligibility.

The petitioner submits substantial documentation about individuals who won gold medals and "grand prix" prizes at the Moscow International Ballet Competition. This documentation is all taken from the Internet. The acclaim of those dancers is not at issue in this proceeding. Rather, the crucial issue is how the petitioner's own acclaim compares to theirs. Having shown that these dancers are strongly represented on the Internet, the petitioner fails to establish that he himself has garnered similar coverage.[1]

As noted above, the petitioner's bronze medal readily qualifies as a lesser international award. Nothing that the petitioner has submitted weakens the Service's conclusion that the medal does not qualify as a major international award and hence as a one-time 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.*

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[1] A www.google.com search for the petitioner's name as spelled on the petition form did not return any matches. A search for a variant spelling, commonly used in the record, yielded two matches: his artist profile on the Colorado Ballet's web site, and an archived review of a 1997 performance in the United Kingdom. The same search engine yielded over 13,000 matches for "Mikhail Baryshnikov"and nearly 16,000 for "Rudolf Nureyev."

The petitioner submits copies of numerous newspaper articles. The burden is on the petitioner to show that these articles derive from major media on a scale consistent with national or international acclaim. Repeated coverage in the local newspapers of a single city or region, for instance, does not show that the alien is known outside of that area. On the other hand, consistent coverage in nationally circulated newspapers or magazines is more persuasive evidence that the alien has a national rather than local reputation and following.

Most of the articles submitted by the petitioner are from local newspapers published in and around Columbia, South Carolina. These articles show that the petitioner's various performances have drawn the attention of critics and other reporters in the Columbia area, but it is not unusual for the local media to report upcoming arts events and, subsequently, publish reviews. Less routine is a mention that Amy Maxwell of the *Free Times* selected the petitioner as the Best Male Dancer of 2000, but examination of the other selectees in the "Dance" category shows that the area of selection was limited to Columbia.

Other articles review performances from the Moscow City Ballet's tours of the United Kingdom in the late 1990s. Reviews of performances in various English, Welsh, and Scottish cities mention the petitioner, along with other dancers in the shows, but the articles do not focus on the petitioner or his performance and thus cannot be considered to be "about" him; the articles are about the shows as a whole, with occasional brief mentions of the petitioner. Again, these articles are reviews, and local newspaper reviews of the performing arts are not limited to artists at the very top of the field. The petitioner has not shown the he has been the central focus of a nationally distributed article or review.

The petitioner appears to have subsequently abandoned his claim to have satisfied this criterion; counsel does not mention it in response to the request for additional information or on appeal.

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

The petitioner has performed leading roles in productions of the Moscow City Ballet and the Columbia Classical Ballet. The petitioner has not, however, submitted evidence to show that the Moscow City Ballet or the Columbia Classical Ballet have distinguished reputations in comparison to other professional ballet companies. The companies' own promotional materials do not establish such distinction, and the Moscow City Ballet's annual tours of the United Kingdom do not necessarily reflect or establish distinction. We note that the promotional posters and fliers reproduced in the record show the petitioner, among other dancers, but do not show the petitioner's name as would be expected if the petitioner were a well-known "draw."

In response to the director's request for further evidence, the petitioner cites the aforementioned letter from [redacted], who asserts that the petitioner is one of six principal dancers out of a total ensemble of 38 "paid dancers" and 15 "apprentice dancers." As above, this indicates that the petitioner plays a leading or critical role for the Colorado Ballet but does not objectively establish that the Colorado Ballet enjoys distinction among professional ballet companies, such that a leading role with the group reflects national or international acclaim.

Counsel cites letter as evidence of the petitioner's leading and critical roles, but does not refer to any leading or critical roles. She states that the petitioner studied at the prestigious Bolshoi Ballet Academy, but studying at an academy is not a leading or critical role. She also states that the petitioner danced "with the renowned Moscow Classical Ballet," but not that the petitioner ever played a leading or critical role for that organization.

> *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 did not initially claim to have satisfied this criterion. In response to the director's request for additional evidence, counsel cites Department of Labor statistics indicating that the highest-paid ten percent of dancers earned more than $55,220 per year indicates that the petitioner is one of six dancers at the Colorado Ballet to earn $1,000 per week (the standard salary paid to its principal dancers). Counsel then states that this figure equates to "$52,000 per year." This inference, however, relies on the assumption that the Colorado Ballet employs its dancers year-round. This assumption is not only unproven, it is flatly contradicted by the petitioner's own evidence. The petitioner has submitted a copy of his contract with the Colorado Ballet, indicating that the petitioner's "employment hereunder shall be for 33 weeks, 1 day," from August 31, 2001 to May 12, 2002, with several "lay-off" periods between the starting and ending dates (which span 36 weeks). The contract specifies the petitioner's salary not as $52,000 per year, but $1,000 per week. It is clear from the contract that the petitioner is paid only for the weeks actually worked, and therefore his salary would not significantly exceed $33,000 for the year.

Even ignoring the above evidence, the petitioner has not established that only the very top ballet dancers in the U.S. earn $52,000 per year. letter indicates that the petitioner earns the standard wage for principal dancers at the Colorado Ballet. The $55,220 figure cited above is not the maximum compensation for dancers, but rather the bottom of the earnings range for the highest paid ten percent of U.S. dancers.

8 C.F.R. § 204.5(h)(3)(x) calls for evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. While this is the only regulatory criterion that specifically mentions and applies exclusively to the performing arts, the petitioner does not claim commercial success, nor does he explain how he purportedly become one of the nation's top ballet dancers without such success.

Beyond the above criteria, the petitioner's initial submission includes five letters from witnesses. Valeria I. Uralskaya, vice president of the Russia Choreographic Association and editor-in-chief of *Ballet* magazine, describes the petitioner's education and training and characterizes the petitioner as "a real pro" who is "well at ease with the vocabulary of modern choreography." does not indicate that the petitioner is a particularly well known dancer, nor does she indicate that the petitioner's work had merited coverage in *Ballet*.

Produce[redacted]escribes the experience of working with the petitioner.[redacted] states "[t]here are few dancers of classical ballet that possess [the petitioner's] high level of artistic ability," and that the petitioner's "passion for dance was evident through the hard work and sacrifice he displayed in rehearsals" for one [redacted]productions.

[redacted]founder/director of Ballet California, states that he "was incredibly impressed" when he witnessed one of the petitioner's performances with the Columbia Classical Ballet.

[redacted]artistic director for the Tallahassee Ballet, states that the petitioner performed in the Tallahassee Ballet's 2000 production of *The Nutcracker*. [redacted]praises the petitioner as "an outstanding artist with great dramatic presentation and exceptional technique in classical ballet," but she does not indicate that the petitioner is a prominent artist whose acclaim and reputation preceded him to Tallahassee. Instead, a "mutual friend . . . in New York" arranged the petitioner's guest appearance. Another witness in Florida is Professo[redacted]of the University of South Florida, who states, with little elaboration, that the petitioner "is a dancer of the highest international standing" who "has distinguished himself in performances around the world." [redacted]is the only initial witness to make any representations concerning the petitioner's "standing" in the field; the other letters focus on assessments of his skill as a dancer.

The director denied the petition, disputing the petitioner's attempt to represent the Moscow International Ballet Competition as equivalent to the Olympics. The director cited evidence in the record indicating that the competition "is a proving ground" for artists at the beginning of their careers, rather than at the peak of their careers. The director noted, for instance, that [redacted]after winning a gold medal at the first competition in 1969, does not appear to have competed in subsequent competitions, despite his status as one of the most famous male ballet dancers in the world. The director also found that the petitioner had not satisfied the other lesser criteria claimed. Regarding the criterion at 8 C.F.R. § 204.5(h)(3)(i), relating to lesser prizes, the director withdrew the earlier stipulation that the petitioner had satisfied this criterion. The director explained that the petitioner's additional evidence, submitted subsequent to the initial filing, "did not indicate that [the petitioner] was judged to be the third best in the competition."

On appeal, counsel states "[t]he Director misinterpreted the statute and regulations when he required that the petitioner document that the very best dancers in the world compete in the Moscow International Ballet Competition and that they return every four years to compete in the competition." It was not the director, however, who claimed that by winning the bronze medal, the petitioner established himself as "one of the top three male ballet dancers in the world." That phrase derives from [redacted]etter, and counsel quoted that phrase in the introductory letter accompanying the submission. The director did not act improperly in considering that claim, and weighing its logical consequences. Newly submitted documents on appeal show that the bronze medal can be divided among multiple winners. In 2001, the Junior Girls and Senior Men categories each had no fewer than four bronze medals awarded. The petitioner has not shown that the petitioner was the sole bronze medallist in his category in 1997.

Counsel states that the director erred by finding that the petitioner's bronze medal is not equivalent to an Olympic bronze medal. The burden, however, is on the petitioner to establish that the two bronze medals are in fact equivalent. Letters from individuals in the field of ballet cannot settle this issue. As noted above, one need not be an athlete to recognize that the Olympic Games represent the pinnacle of athletic competition. The petitioner has not shown that the Moscow International Ballet Competition enjoys comparable recognition among individuals outside of the field of ballet.

Counsel protests the director's reversal concerning the bronze medal's status as a lesser national award. Upon careful consideration of the evidence presented, we find that the medal does constitute a lesser international award. Although there are some restrictions on eligibility, the record shows that the competition is a significant international event, and a prize at that competition cannot lightly be disregarded. Regarding the director's observation that did not compete again after winning the gold medal, we note that documentation submitted on appeal indicates that gold medallists and grand prix winners are not eligible to compete again. Thus, obviously there can be no repeat winners of the top prizes.

At the same time, we cannot find that the petitioner's medal enjoys the same universal recognition of a very small number of major prizes such as an Olympic medal. The petitioner has not shown, for instance, that the Moscow International Ballet Competition garners coverage in the popular press similar to the coverage afforded the Olympics (which are covered worldwide on television) or the Nobel Prize (the awarding of which routinely garners headlines in major newspapers and magazines). Even if the Moscow International Ballet Competition were shown to be the single most important ballet competition in the world, the structure of the regulations does not require that a prize from this competition qualifies an alien under the one-time achievement clause, if the competition itself is largely unknown except to those well-versed in ballet.

Counsel argues that "the Moscow City Ballet, Imperial Russian Ballet and Colorado Ballet are organizations with distinguished reputations." The record contains no evidence that the petitioner has danced in a leading or critical role for the Imperial Russian Ballet, and therefore its reputation is moot. Counsel notes that one of the witnesses has referred to the Moscow City Ballet as "renowned," but this is hardly sufficient evidence of a distinguished reputation. With regard to the Colorado Ballet, counsel states that it "is not merely a regional company but a nationally recognized company of distinguished reputation." 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). In any event, counsel's credibility is compromised in light of the claim, falsified by the petitioner's own contract, that the Colorado Ballet pays the petitioner "$52,000 per year." As evidence of the Colorado Ballet's reputation, the petitioner submits copy of the covers of two issues of *Dance Magazine*. The words "Colorado Ballet" are in prominent type on the cover of the September 1997 issue. The September 1996 cover does not identify the company but shows a dancer who, other documentation shows, is a member of the Colorado Ballet. A smaller headline on the same cover refers to "The Comeback of Laguna Beach High." The articles themselves are not in the record, and it is therefore impossible to determine whether the Colorado Ballet has received an unusually

high volume of press coverage compared to other ballet companies of comparable size. Another issue of *Dance Magazine* included a review of a February 2000 performance at the Joyce Theater in New York City. The review indicates that the performance marks the Colorado Ballet's New York debut, except for "a couple of one-performance stands in Brooklyn." Counsel asserts that the Colorado Ballet's distinguished reputation is established by the reviewer's comment that the group is "highly regarded, stoutly touted, and generally shipshape." The review itself was mixed, criticizing the "ill-chosen" program.

Counsel maintains on appeal that the petitioner earns $52,000 per year, but submits no documentation to support this claim. Counsel merely extrapolates from the figure of $1,000 per week, and disregards the petitioner's contract that shows that the petitioner is only paid 33 weeks out of the year. Counsel submits prevailing wage information, showing that the Level 2 Wage for dancers in the Denver area is $35,256 per year. Leaving aside concerns that the local prevailing wage does not establish national salary rates, the Denver prevailing wage exceeds the $33,000 annual salary that is readily calculated from the petitioner's contract.

The petitioner has not shown that the petitioner is a particularly well-known ballet dancer or that the petitioner has otherwise reached the very top of his field of endeavor. The petitioner won a significant prize in 1997, and has since then been gainfully employed in a highly competitive field, but success is not tantamount to sustained national or international acclaim. The petitioner has not established that he has earned widespread, lasting recognition, and the additional background materials (submitted on appeal) regarding [redacted] merely serve to underscore the heights to which ballet dancers are capable of rising, but which the petitioner himself has not approached.

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 ballet 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 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.