



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: **SEP 30 2004**

IN RE:

Petitioner:

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)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*Mari Johnson*

*for* 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 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 she 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 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, she 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 submitted evidence that she won first prize at the Third International Ballet Competition, Luxembourg in 1995 in addition to other recognition. The director concluded that the petitioner meets this criterion.

*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, the petitioner submitted April 1995 articles in the *Luxemburger Wort*. The petitioner did not provide a full and complete translation of the articles. Nevertheless, they appear to be reporting the semifinals and finals of the Luxemburg competition. Each article includes only a single sentence relating to the petitioner herself. In the director's request for additional documentation, he specifically requested articles specifically about the petitioner. In response, the petitioner submitted an invitation to a dinner hosted by *Cosmopolitan*, the cover page of an April 1995 Russian edition of *Cosmopolitan* and a list of individuals that apparently appeared in the magazine (hereinafter professional dancer list). Once again, the petitioner did not submit a complete translation of the list. The partial translation indicates that the petitioner's listing reported her 1995 award in Luxemburg.

The petitioner also submitted an extract from the 2000 edition of the [REDACTED]. Without a complete translation of the page, it is not possible to determine the specific topic from which the extract is taken. The partial translation indicates that the petitioner is listed as a dancer at the National Academic Ballet Theater of Belarus. Finally, the petitioner submitted several reviews of performances in which she appeared. The reviews were published in what appear to be local papers, including the *Lexington Herald-Leader*, *Minsk Polymya*, the *Midland Daily News*, the Mason City/Clear Lake, Iowa *Globe-Gazette*, the *Coloradoan*, the Philadelphia area "Ticket" entertainment section, and the *Roswell/Alpharetta Neighbor*; and a community news website, [www.providencephoenix.com](http://www.providencephoenix.com). A few of these reviews are dated after the date of filing.

The director concluded that the record included no published material specifically about the petitioner in major media as of the date of filing. On appeal, counsel asserts that the petitioner was featured in *Cosmopolitan*, with a readership of 2,992,536, and the widely read culture magazines *Polymya* and *Cultural Divide*. Counsel also reiterates the positive reviews the petitioner's dancing has received in local U.S. papers.

The petitioner submits evidence of *Cosmopolitan's* readership and an actual page from the Russian edition of *Cosmopolitan* containing a box with a list (hereinafter box list) similar to the professional dancer list submitted previously, but with no translation provided on appeal. The petitioner's name is apparent in the box list, but the Russian that follows does not include all of the Russian included in the professional dancer list. The petitioner also submitted a 1996 article in the same magazine with no translation. The petitioner did not submit any evidence that *Polymya* or *Cultural Divide* are national publications.

That the petitioner's name appeared on a list of dancers in *Cosmopolitan* is insufficient. The regulation requires published material about the petitioner. The list is not primarily about the petitioner herself. Similarly, a positive reference to the petitioner in a review that is primarily about the show as a whole is not published material about the petitioner. Moreover, the petitioner has not submitted evidence that any of these reviews appeared in major media with national distribution. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

The petitioner relies on several reference letters to meet this criterion. [REDACTED] Artistic Director for the [REDACTED] School, asserts that the petitioner is talented and experienced. [REDACTED] Artistic Director for the Festival Ballet Providence where the petitioner has performed, highlights the petitioner's well-received performances in Spain and elsewhere. [REDACTED] Artistic Director of the Academy of International Ballet and Performing Arts and former fellow dancer of the petitioner's, provides general praise of the petitioner's talent and recounts the favorable reception they received when touring as guest artists together. [REDACTED] Artistic Director of the Mobile Ballet and former choreographer for the Festival Ballet Providence when the petitioner performed there, praises the petitioner's talent and background.

Included among the letters submitted in response to the director's request for additional documentation [REDACTED] former principal dancer with American Ballet, praises the petitioner's talent and "unique artistry." [REDACTED] Artistic Director for the State Ballet of Rhode Island, describes the petitioner as gifted with enthusiastic artistic ability and passion.

Quoting one letter as representative, the director concluded that these letters did not identify any original contribution or explain the significance of that contribution. On appeal, counsel notes that Mr. Corey indicated that the petitioner is part of the Russian Federation's legacy of developing the finest dancers in the history of ballet. Counsel also quotes some of the most favorable praise in the other letters.

The above letters are mostly from those who have worked with the petitioner. While such letters are important in providing details about the petitioner's role in various performances, they cannot by themselves establish the petitioner's national or international acclaim.

Moreover, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. While the petitioner has received positive reviews of her dancing, nothing in the record suggests that her abilities as a dancer have been influential in the field to such an extent as to be considered a contribution to the field of major significance. There is no evidence that the petitioner is responsible for a new trend in ballet or has reached such an unprecedented level of achievement (comparable to an athletic world record) to which others in the field aspire.

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

The petitioner relies on the programs and reviews as evidence that the petitioner has "showcased" her work on stage. The director analyzed the evidence, concluding the performances were not indicative of being one of the very few at the top of the ballet field. We find that this criterion relates to visual, not performing, artists. Where a criterion does not apply, 8 C.F.R. § 204.5(h)(4) allows Citizenship and Immigration Services (CIS) to consider comparable evidence. We do not find that the petitioner's stage performances, inherent to the field of ballet, are comparable to the type of display at exclusive exhibitions and showcases that is contemplated by this regulation. While the Festival Ballet Providence might be considered a type of "exhibition" using a broad interpretation of the word, there is no evidence regarding how it selects its featured performers such that we can conclude that performing at the festival is a goal to which the most experienced and acclaimed performers of ballet aspire.

Rather, the petitioner's evidence of performing relates more to 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that the petitioner has performed in a leading or critical role for organizations or establishments that

have a distinguished reputation. The petitioner, however, does not claim to meet this criterion. The record does indicate that the petitioner has worked as a "guest principal," "guest artist" and "prima ballerina," but the record does not adequately document the significance of these roles (for example, how many people fill this role for the company at any one time) or the reputation of the organizations for which the petitioner has performed those roles.

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 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 petitioner shows talent as a ballet dancer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.