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FILE: [REDACTED]
WAC 03 093 51990

Office: CALIFORNIA SERVICE CENTER Date:

JUN 23 2005

IN RE: Petitioner: [REDACTED]
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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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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 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 sciences. 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. The director also appears to have questioned whether the petitioner's field is truly a science.

On appeal, the petitioner asserted that the director's request for additional evidence (RFE) simply "regurgitated" the regulatory requirements without requesting specific evidence. The record does not support this characterization. The RFE requested specific evidence, such as "the minimum requirements and criteria used to apply for membership in the association in which the alien claims membership." The petitioner's remaining assertions and the evidence submitted will be discussed below.

Before discussing the petitioner's eligibility, we acknowledge that the director has approved nonimmigrant visas for the petitioner in a similar classification. We do not find, however, that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis on the evidence of record.

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 registered somatic movement therapist. The petitioner began her career as a dancer. We note that some of the evidence, such as her scholarship and the majority of the published material about the petitioner, relates to her work as a dancer. The petitioner, however, does not seek to continue her performing career. Rather, she seeks to provide somatic movement therapy. As such, any evidence relating to her recognition as a dancer is not relevant to this petition.

In order to evaluate the petitioner's eligibility, it is necessary to define her field. On Part 6 of the petition, the petitioner asserts that she is a somatic movement therapist. The record is not persuasive that somatic movement therapy constitutes its own field. The petitioner provides the following nontechnical description of her job: "Consult with individual patients, clients and organizations. Teach and lecture at seminars and training session." The petitioner is a trained dancer and is certified in movement techniques and massage.

We note that, according to the Occupational Therapy Handbook, "all States require physical therapists to pass a licensure exam after graduating from an accredited physical therapist educational program before they can practice." While the petitioner has certification from some trademarked programs of limited reputation, the petitioner has not demonstrated that any of these programs constitute accredited physical therapist educational programs or that she is licensed by the State of California to practice as a physical therapist. Thus, the petitioner does not qualify as a physical therapist.

The Occupation Outlook Handbook provides the following description for recreational therapists:

Recreational therapists provide treatment services and recreation activities to individuals with illnesses or disabling conditions. They use a variety of techniques to treat or maintain the physical, mental and emotional well-being of clients. Treatments may include the use of arts and crafts, animals, sports, games, *dance and movement*, drama, music and community outings.

(Emphasis added.) While a "bachelor's degree in therapeutic recreation is the usual requirement for entry-level positions" in this field, "training in art, drama, or music therapy" is sufficient for some positions. Thus, the petitioner's work appears to fit within this field.

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.¹

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 a 1982 travel and study grant from the Committee on Arts and Arts Education in Brussels. The petitioner asserts that the grant was to study dance. In his RFE, the director requested evidence of the significance of any awards. The petitioner's response did not include any reference to this criterion. The

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

director concluded that the petitioner did not submit any evidence relating to this criterion in her field of claimed expertise. The petitioner does not directly contest this conclusion on appeal.

Scholarships that fund training in one's field are not awards that can serve to meet this criterion as the most experienced members of the field do not compete for such scholarships. Regardless, the scholarship to study dance was not issued in recognition of the petitioner's excellence as a movement therapist. In fact, the petitioner did not obtain any certification in that field until 1993. Ultimately, a scholarship to study dance in 1982 is not indicative of sustained national or international acclaim as a movement therapist as of the date of filing 20 years later.

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 her certificates affirming her training in various movement therapy techniques. The petitioner also submitted evidence of her membership in the Association for Prenatal and Perinatal Psychology and Health (APPPAH). In response to the director's RFE requesting the membership requirements, the petitioner submitted the certification requirements for her credentials, but no materials regarding the membership requirements for APPPAH. The director concluded that the petitioner had not established that her membership in associations that require outstanding achievements of their members. The exhibits submitted on appeal do not address this criterion.

Certification awarded upon completion of specified training is not a membership. Even assuming the petitioner established the prestige of the organizations that certified her competency in various techniques, a license to practice in one's field is only a criterion for the lesser classification "aliens of exceptional ability" pursuant to section 203(b)(2) of the Act,² not for the more exclusive classification sought by the petitioner.

While the petitioner is a member of APPPAH, the record does not establish that this association requires outstanding achievements of its members. As such, we concur with the director that the petitioner has not established that she 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.

The petitioner submitted an unsigned letter confirming the petitioner's appearance on "Everybody's Angels," which airs on TCI Cable Channel 27 "only in San Francisco." The petitioner was interviewed on KUSF-FM radio of the University of San Francisco on at least three occasions. The petitioner submitted promotional materials for seminars led by the petitioner on Body-Mind Centering. The petitioner also submitted materials about the Lar Lubovitch Dance Troupe, none of which mention the petitioner by name. Finally, the petitioner submitted some foreign dance reviews. While some of these foreign reviews mention the petitioner by name, the reviews are not primarily about the petitioner.

² We note that this lesser classification normally requires a labor certification from the Department of Labor, the entity with the jurisdiction to evaluate the claim made by several of the petitioner's references that there is a shortage of workers in her field.

The director requested evidence of the significance of the above materials, including the circulation data for the media that printed the articles. In response, the petitioner no longer claimed to meet this criterion.

The director concluded that the petitioner had not submitted published materials about her work in the field in major media. The petitioner's appeal does not address this criterion.

The cable and radio broadcasts appear limited to the San Francisco area and cannot be considered major media. They did not provide the petitioner with national exposure. Promotional materials, advertisements and press releases are not as persuasive as independent journalistic coverage. Finally, the dance reviews are not primarily about the petitioner and do not relate to the field of expertise claimed, movement therapy. In light of the above, we concur with the director that the petitioner has not established that she meets 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.

Initially, the petitioner submitted a letter from Bonnie Bainbridge Cohen, founder of Body-Mind Centering, asserting that the petitioner has taught this technique. In addition, the petitioner submitted an invitation to participate in a health forum. The record lacks evidence that this forum took place prior to the date of filing.

In response to the director's RFE, the petitioner submitted a letter from Bobbi Jo Lyman, Editor-in-Chief for the *Journal of Prenatal and Perinatal Psychology and Health* published by APPPAH. [REDACTED] indicates that he invites "people with certain specializations in this discipline to be part of the peer review process." He then asserts that the petitioner is "a member of the Editorial Board" of the journal. The director concluded that the petitioner had not established that the individuals whose work she was judging were at the same professional level as the petitioner. The petitioner does not address this criterion on appeal.

Evaluating one's students is inherent to teaching. We cannot conclude that every instructor enjoys national or international acclaim. Thus, the petitioner's teaching duties cannot serve to meet this criterion. In addition, demonstrating or discussing one's technique at a symposium does not involve judging the work of others in one's field. Moreover, the petitioner has not established that she presented her work at the symposium prior to the date of filing. A petitioner must establish her eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971).

The letterhead for the *Journal of Prenatal and Perinatal Psychology and Health* lists three editors and an associate editor. The petitioner is not one of these individuals. Rather, it appears that the "editorial board" is simply the pool of peer-reviewers the journal uses to evaluate manuscripts submitted for publication. Serving in an editorial position is more persuasive than serving as a peer-reviewer. Nevertheless, it is not inherent to the field of recreational therapy to serve as a reviewer for a peer-reviewed medical journal. As such, the petitioner's service as a peer-reviewer could serve as minimal evidence to meet this criterion. The letter from Mr. Lyman, however, does not identify which manuscripts the petitioner reviewed and whether these reviews occurred prior to the date of filing. As stated above, the petitioner must establish eligibility as of that date. *Id.*

In light of the above, the petitioner has not established that she met this criterion as of the petition's filing date.

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

Initially, the petitioner asserted that her experience in the field constitutes an original contribution to the field. The petitioner is certified in [REDACTED] technique, Body-Mind Centering and aquatic therapy. She did not develop any of these techniques. [REDACTED] developed the Feldenkrais technique and there are 2,000 practitioners worldwide, according to materials submitted by the petitioner.

The petitioner submits letters from several institutions where she has worked and from the families of children to whom she has administered therapy. They attest to the petitioner's unique training in both [REDACTED] and Body-Mind Centering, asserting that few movement therapists are certified in both techniques. Not every combination of training, however, can be considered a contribution of major significance to the field. We note that Martha Eddy, President of the International Somatic Movement Education and Therapy Association, asserts only that the petitioner's integration of these two methods "may one day be recognized as a milestone in our field." Speculation that the petitioner's integrated approach may someday be viewed as significant is insufficient to meet this criterion.

[REDACTED] of the Physical Therapy Center, notes that the petitioner's methods "are an ideal supplement to the traditional physical therapy and rehabilitation programs." [REDACTED] does not indicate that any accredited university has considered integrating the petitioner's techniques into their physical therapy curricula.

Other references assert that the petitioner's integration of movement therapy with her instruction of tango dance, called "Intimate Embrace Tango," constitutes a contribution of major significance. Susan Stein, a marriage and family therapist who is one of the petitioner's dance students, asserts:

Because the tango is a dance that "takes two," we are called to learn to work diligently with our partners. As a marriage and couples therapist, I am awed at the healthy relationship skills [the petitioner's] teaching style cultivates. WE don't just learn how to lead and following the traditional sense. We learn how to lead by deeply sensitizing ourselves to our partners' every step and position, but "tuning in" and staying receptive at the same time that we take care of ourselves and move with confidence. And as "followers," we learn to surrender willingly and trust, while also maintaining our own sense of balance.

[REDACTED] concludes that the petitioner "is a pioneer in the field of somatic movement therapy as exemplified by her unprecedented integration of this approach with her in-depth understanding of Argentine Tango." This single testimonial does not establish that the integration of movement therapy with dance instruction constitutes a contribution of major significance to the field of movement therapy. The record is absent evidence that the petitioner's techniques have been adopted by other dance instructors or have otherwise impacted the field.

In addition, the petitioner's references assert that the petitioner has produced results for children with conditions that do not respond to conventional medicine, such as cerebral palsy and autism. They also attest to the benefits the petitioner could provide to her clients. It is inherent to movement therapy to improve the abilities of one's clients. Not every movement therapist who performs the services requested of her can be said to have made a contribution of major significance to the field of movement therapy. Moreover, mere testimonials from satisfied clients are not evidence of the petitioner's impact on her field.

The director concluded that the record lacked evidence that somatic movement therapy was recognized by the medical community as a whole. In response, the petitioner argues that somatic movement therapy constitutes complimentary medicine and is a science. The petitioner submits materials demonstrating the popularity of complimentary medicine and that the government funds an office to research such medicine.

We do not question that physical therapists are members of the medical community and that, therefore, their work would fit within the sciences. The Occupational Outlook Handbook, however, reveals that every state regulates physical therapists. The petitioner is not a licensed physical therapist and we will not consider her to be part of this field.

In addition, we do not question that fitness and movement are integral to health and addressing disabling conditions and injuries. While many scientists have studied the benefits of fitness, we cannot conclude that every coach, fitness instructor or movement therapist is a scientist.

Moreover, while we do not question the recent popularity of so-called complimentary or alternative medicine, we will not consider "traditional" or "alternative" medicine as a separate field.

There is only scientifically proven, evidence-based medicine supported by solid data or unproven medicine, for which scientific evidence is lacking. Whether a therapeutic practice is 'Eastern' or 'Western,' is unconventional or mainstream, or involves mind-body techniques or molecular genetics is largely irrelevant except for historical purposes and cultural interest.

Fontanarosa PB, Lundberg GD, "Alternative medicine meets science," *Journal of the American Medical Association* 280: 1618-1619, 1998.

Initially, the petitioner submitted "The *Feldenkrais Method*" by Mark Reese. Page two of this document states: "Although it possesses significant medical and therapeutic benefits, *Functional Integration* [a segment of the method] is neither medical nor therapeutic in its philosophical foundation and methodology." Similarly, on appeal, the petitioner submits an article by [REDACTED] investigating the benefits of the Feldenkrais method. The article is published in the *American Journal of Pain Management*. In the discussion section of the article, the authors admit that the study was neither controlled nor blind, yet they conclude that their results are "very promising." The very next sentence, however, asserts that whether the positive results "were due to a placebo effect or to some more specific scientific explanation is largely irrelevant." The authors conclude that the patients "gained" from providers who "are reassuring and positive about the modality's ability to diminish pain and facilitate healing." This discussion is hardly evidence that the Feldenkrais method has been recognized in the medical community as a breakthrough treatment for pain or movement-related problems. Regardless, as stated above, the petitioner did not develop this method. The record contains no evidence that any researchers are investigating the potential of the petitioner's integration of Feldenkrais with Body-Mind Centering. We note that the most glowing evaluations of the Body-Mind Centering approach are from the founder of that technique and the president of the institution that promotes it.

The letters submitted on appeal are not persuasive that the petitioner herself has contributed the field of movement therapy. [REDACTED] a child psychologist, opines that "alternative and complimentary medical therapies such as the somatic movement programs that [the petitioner] teaches and utilizes can provide an effective tool to support and promote wellness." This statement does not explain how the petitioner's methods

are superior to those of other movement therapists or even other practitioners of somatic movement therapies. [REDACTED] a physician, attests to the improvements his patients have undergone as a result of being referred to the petitioner. [REDACTED] does not explain whether such results are atypical for movement therapy in general.

Overall, the record establishes that the petitioner's employers and clients have been satisfied with her work. We must presume that the words "of major significance" are not superfluous and, thus, have some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). Thus, not every original technique can serve to meet this criterion. The record lacks evidence that the petitioner has impacted the field of movement therapy as a whole. Thus, we concur with the director that the petitioner has not demonstrated that she meets this criterion.

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

The petitioner claims to have performed a leading or critical role for the Bridge School, the Institute of Holistic Healing Studies at San Francisco State University, the Feldenkrais Guild of North America, and the Physical Therapy Center.

The petitioner submitted a letter from the Executive Director of the Bridge School confirming the petitioner's position as a lead consultant in movement therapy. The accompanying materials establish that the Bridge School enjoys a distinguished reputation nationally. In addition to its recognition as a school, the institution "disseminates the information learned and technology developed at our Northern California campus to individuals throughout the world." The petitioner did not submit any evidence that the Bridge School has disseminated her techniques, crediting her as the developer of these techniques.

Kenn Burrows, a member of the core faculty at the Institute for Holistic Healing Studies, invites the petitioner to speak again at the institute based on positive feedback from previous presentations by the petitioner. The materials accompanying this letter indicate that the Holistic Health "certificate" offered by this institute is available to both matriculating and non-degree students. Although this institute has sponsored the petitioner for non-immigrant visas, the record contains no evidence that the petitioner has actually worked for the institute.

[REDACTED] Assistant Director for the Feldenkrais Guild, asserts that the petitioner presented her Intimate Embrace Tango techniques at one of the guild's conferences. Once again, the record does not establish that the petitioner has ever worked for the guild. Moreover, while the attached materials affirm that the Feldenkrais method has some degree of recognition, it is not clear that the guild enjoys a distinguished reputation nationally.

[REDACTED] founder of the Physical Therapy Center, affirms his intent to represent the petitioner "for a series of seminars, lectures and training sessions as well as personal consultations at sites in California, Michigan and across the United States." While the petitioner claims on her Form G-235A submitted in support of her adjustment application that she worked for this center as a movement therapist, [REDACTED] does not confirm this employment. While [REDACTED] estimates that the petitioner's earning potential is \$100,000, the record contains no evidence of the petitioner's actual income.

In response to the director's RFE, the petitioner resubmits the evidence regarding the Bridge School and claims to have played a critical role for the Women's Building in San Francisco. Specifically, Jovida Ross, Community

Resource Coordinator, asserts that the petitioner is performing treatment sessions for low income and underserved women and is an invited present for the Women's Resource Fair. The date of the fair is after the date of filing.

The director concluded that while the Bridge School enjoyed a distinguished reputation, the petitioner had not established that she played a leading or critical role for that school. On appeal, the petitioner asserts that the director "unfairly discounted" the letter from the school.

We concur with the director's analysis. The record does not establish that the role of lead consultant is a leading or critical role for the Bridge School. The petitioner does not even claim to have worked directly for the school on her Form G-325A. The petitioner has not established that every consultant utilized by the school, but not hired, plays a leading or critical role. The record lacks evidence regarding how many such consultants the school utilizes and how often her services were utilized. As stated above, while the school disseminates the most significant developments at the school, there is no evidence it has disseminated a summary of the petitioner's work.

Regarding the remainder of the petitioner's claims, presenting one's work at a conference is not playing a leading or critical role for the entity as a whole, which we interpret to generally require more long-term relationship. In addition, the record lacks evidence that the other entities enjoy a distinguished reputation nationally.

In light of the above, we find that the petitioner has not established that she meet this criterion.

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 recreational or movement therapist 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 recreational or movement therapist, 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.