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FILE:

WAC 05 075 52118

Office: CALIFORNIA SERVICE CENTER

Date:

**AUG 16 2006**

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)

ON BEHALF OF PETITIONER:



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, Chief  
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 (AAO) 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. 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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on January 18, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a ballroom dancer, choreographer, and instructor. At the time of filing, the petitioner was working for Fred Astaire Dance Studios in Phoenix, Arizona.

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 pertaining 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.*

The petitioner submitted a "Certificate of Achievement" (2003) presented to him by his employer, Fred Astaire Dance Studios, for qualifying "personnel in the Fred Astaire South Central Region." This employee award reflects institutional or regional recognition rather than national or international recognition.

The petitioner also submitted several award certificates from amateur ballroom dance competitions that took place in the 1980's, 1990's, and 2000. The petitioner's most recent awards for competitive dancing include the following:

1. First place diploma for the "Open Ballroom Championship for the City of Shumenchup" (2000)
2. Fourth place diploma for the "Ballroom Dance Competition for the Cup of the City of Plovdiv" (2000)
3. Certificate for "4<sup>th</sup> Place in Latin Amateurs" at the "International Dance Competition '99" in Scopie, Masedonia (1999)
4. Certificate for "6<sup>th</sup> Place in Latin Amateur" for a competition in Haskovo, Bulgaria (1998)

Items 1 and 2 above reflect local recognition rather than national or international recognition. Regarding items 2, 3, and 4, we do not find that finishing fourth or sixth place in a dance competition constitutes winning a "prize or award."

We note that while the petitioner has competed in the United States since his arrival here in 2001, there is no evidence showing that he has won a nationally or internationally recognized prize or award for competitive dancing in this country.

The record includes an April 3, 2001 letter of recommendation from [REDACTED] then Deputy Chairman of the Bulgarian Dance Sport Federation, stating: "In 2000 in Stara Zagora [the petitioner and his partner] came out again second in the tournament for the cup of the town. Next year they became the winners and took the Cup of the City of Plovdiv. After that competition they stopped their amateur career and went to the ranks of the professional couples."

letter discussing the petitioner's participation in "amateur" dance competitions raises an important issue. As stated previously, the regulation at 8 C.F.R. § 204.5(h)(2) requires the petitioner to submit evidence showing that he "is one of that small percentage who have risen to the very top of the field of endeavor." Prizes and awards from amateur dance competitions do not meet this standard. The record includes no evidence showing that the petitioner has won a nationally or internationally recognized prize or award at the highest level of his sport (i.e. – the professional level) as opposed winning at the amateur or youth level.

Regarding the multiple award certificates submitted by the petitioner, there is no evidence of contemporaneous publicity surrounding his awards or evidence showing that they command a substantial level of recognition. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), however, specifically requires that the awards or prizes be nationally or internationally *recognized* and it is the petitioner's burden to establish every element of a

given criterion. In this case, there is no documentation from the awarding entities or print media to establish that the petitioner's competitive awards are nationally or internationally recognized.

We must also examine whether the petitioner has demonstrated his extraordinary ability as a dance instructor. It is not clear that significant awards exist for dance instructors; however, nationally or internationally recognized prizes or awards won by teams or couples coached by the petitioner may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the petitioner acts as coach. A coach who has established a successful history of coaching top dancers who win titles at the national level or above has a credible claim under this visa classification; a coach of intermediates or novices does not.

On appeal, the petitioner submits a letter from the president of the Bulgarian Dance Sport Federation stating: "In the class 12 years [the petitioner's] couple [redacted] and [redacted] became champions for Bulgaria for standard dancing and vice champions for Latin dancing. In the class till 14 years their couple [redacted] and [redacted] took 3<sup>rd</sup> place in Latin dancing and 5<sup>th</sup> place in standard dancing program." We find no evidence showing that dancers under the petitioner's tutelage have won competitions at the highest national level, rather than competitions limited to a particular region, age group, or lesser skill level. In this case, the record includes no evidence showing that the petitioner has coached a professional dance pair to a nationally or internationally recognized title.

The petitioner has not established that he meets this criterion.

*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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a certificate from the National Dance Council of America, Inc. (NDCA) stating that he is registered as a "Pro/Am Teacher." The petitioner also submitted a pamphlet from the NDCA entitled "Professional Certification." Nothing in this pamphlet indicates that admission to membership in the NDCA requires outstanding achievement or that individuals are evaluated by national or international experts in consideration of their admission to membership. The petitioner has not established that he 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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>1</sup>

The petitioner submitted a September 7, 2001 letter from [REDACTED] Director, Dance Time, Inc., a Fred Astaire Dance Studio, stating: "Bulgarian newspapers *Chernomosrsky Far* and *Bourgas Dnes* featured and interview with [the petitioner] about the Dance Club and his job as well as his career as a professional competitive dancer." The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires the submission of published materials about the alien, rather than third-party letters attesting to the existence of such published materials. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The letter from Paige Trent cannot carry the same weight as the published materials themselves. Further, there is no evidence showing that the aforementioned publications qualify as major media. The petitioner has not established that he meets this criterion.

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

On appeal, the petitioner submits various letters of support.

[REDACTED] a trainer at the Saturn Dance Sport Club in Plovdiv, Bulgaria, states that the petitioner and his partner have "great capabilities to become very good professionals." Assertions from a witness that the petitioner has a promising future do not establish eligibility for this classification, for the regulations clearly call for evidence that the petitioner already enjoys national or international acclaim. The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

President, "Bourgas-75" Municipal Dance Sport Club, Bourgas, Bulgaria, states that the petitioner and his dance partner have made "a considerable contribution to the significance and prestige of their club." The petitioner may have provided services that were beneficial to his employer, but his ability to

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<sup>1</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

significantly impact his field beyond the “Bourgas-75” Municipal Dance Sport Club has not been adequately demonstrated.

Chairperson of the Trainers’ Council of the Bulgarian Dance Sport Federation, states: “[The petitioner and his partner] as trainers and competitors play an important role in the development of dance sport movement in Bulgaria. They have great organizational capabilities in implementation of yearly dance sport tournaments on the territory of Bourgas municipality.” While the petitioner may have played a role in organizing tournaments in his municipality, there is no evidence showing that this work has had a substantial national or international impact. Nor is there supporting evidence (beyond mere testimony) demonstrating the national or international reputation of these tournaments or showing the degree of their success that was directly attributable to the petitioner’s efforts.

In his most recent letter, who now identifies himself as a trainer at the Orion Dance Sport Club in Sofia, Bulgaria, states:

The professional qualities of the couple as “Bourgas-75” club’s leaders can be seen in their personal achievements, as well as in the success of dozens of the club’s dance couples-finalists in the tournaments.

[The petitioner and his partner] having excellent organizational capabilities are founders of the best national tournaments on the territory of Bourgas municipality.

A joint letter of support from trainers at the “Paradise Dance” Sport Club in Plovdiv, Bulgaria, repeats the preceding assertions of . The preceding letters, however, do not specifically identify the couples coached directly by the petitioner or the competitive events where they placed as finalists. Further, while the preceding letters indicate that the petitioner and his partner organized “the best national tournaments on the territory of Bourgas municipality,” the record includes no contemporaneous evidence to support this assertion (such as national media publicity or promotional material relating to the tournaments). The statute and regulations, however, require “extensive documentation” of sustained national or international acclaim.

Regarding the letter from the president of the Bulgarian Dance Sport Federation discussing the competitive accomplishments of and we note that their competitive accomplishments have already been addressed under the criterion at 8 C.F.R. § 204.5(h)(3)(i). The ten criteria are intended to be separate and distinct from one another. This criterion requires “contributions of major significance in the field” rather than competitive recognition earned by youths taught by the petitioner.

In order to establish major significance, the petitioner must show that his athletic or coaching contribution has demonstrably influenced the greater field at the national or international level. The record, however, includes no comparative evidence showing that the petitioner is among the most influential dancers or instructors currently active in the sport of professional ballroom dancing. In regard to the petitioner’s coaching contributions, the petitioner has not submitted evidence showing, for example, that dance studios from throughout the United States or Bulgaria have adopted his particular coaching techniques. In this case, we

find that the petitioner has failed to demonstrate a specific coaching or athletic accomplishment that rises to the level of a contribution of major significance in his sport. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that he meets this criterion.

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

We find that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for competitive dancers such as the petitioner. Virtually every ballroom dancer "displays" his or her work in the sense of performing in front of an audience. Acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. The record includes no evidence showing that the petitioner's dance performances at various competitions received the top billing, drew record crowds, or resulted in greater audiences than other similar contests that did not feature the petitioner. The petitioner has not established that he meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted letters of support reflecting that he was employed by the "Bourgas-75" Municipal Dance Sport Club in Bulgaria and Fred Astaire Franchised Dance Studios in Phoenix, Arizona and Winston-Salem, North Carolina. The record, however, includes no evidence showing that these local organizations have earned distinguished reputations at the national or international level. For example, there is no evidence of official competitive results indicating that dancers from these particular establishments consistently win national titles, or that these establishments field a greater percentage of national finalists than their counterparts. Nor has it been shown that the petitioner's role as an instructor at these establishments was more important than that of the other dance instructors employed by these organizations. We find the evidence is not adequate to demonstrate that the petitioner has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim. Thus, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

While Citizenship and Immigration Services (CIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, SRC 02 032 52222, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time

reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished himself 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 the 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.