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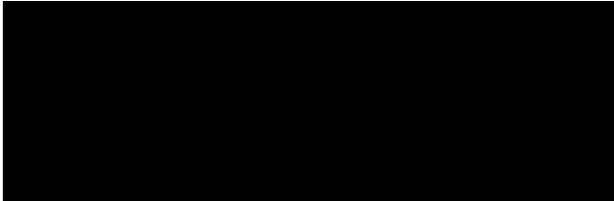
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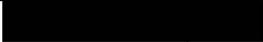
U.S. Citizenship and Immigration Services

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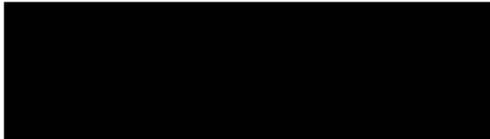
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IN RE:

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, 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. 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.

On appeal, counsel argues that the petitioner “meets the requirements for the classification sought” as an alien of extraordinary ability and that the petitioner “has enjoyed sustained national or international acclaim.”

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 earned sustained national or international acclaim at the very top level.

This petition, filed on November 22, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a dancer. At the time of filing, the petitioner was working as a dancer and teacher at Repertory Dance Theatre in Salt Lake City, Utah, and as a guest artist, teacher, and choreographer for the Department of Theatre Arts and Dance at Southern Utah University.

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 the following:

1. May 15, 1998 letter from Northern Illinois University offering the petitioner a scholarship in the amount of \$420.00 for the 1998-1999 academic year
2. September 6, 1998 letter from Northern Illinois University offering the petitioner an additional student scholarship in the amount of \$300.00 for the 1998-1999 academic year
3. May 19, 1999 letter from Northern Illinois University notifying the petitioner that her academic record qualified her for the Dean's List
4. March 12, 1999 letter from Ohio State University informing the petitioner of her receipt of a University Fellowship for graduate study in Dance
5. March 8, 2000 letter from Ohio State University informing the petitioner of her receipt of Program for the Enhancement of Graduate Studies' (PEGS) funding in the amount of \$200.00 for travel expenses to New York to attend a Doug Varone workshop
6. May 15, 2000 letter from Ohio State University offering the petitioner an appointment as a Graduate Associate in the Department of Dance
7. March 11, 2001 letter from Ohio State University Department of Dance informing the petitioner of her receipt of "a scholarship in the amount of \$500.00 for the Labanotation Teacher Certification Course"
8. January 1, 2003 Certificate from the Dance Notation Bureau, Inc. stating that the petitioner "satisfactorily met the standards required" for a "Elementary Teaching Certificate in Labanotation"
9. April 19, 2001 letter from Ohio State University notifying the petitioner of her receipt of an award of \$400.00 to support the cost of her Master of Fine Arts research project
10. March 12, 2001 letter from Ohio State University informing the petitioner of her receipt of Program for the Enhancement of Graduate Studies' (PEGS) funding in the amount of \$40.00 to cover summer conference fees
11. May 21, 2001 letter from Ohio State University offering the petitioner a Summer Quarter appointment as a Graduate Associate in the Department of Dance
12. May 23, 2001 letter from Ohio State University offering the petitioner an appointment as a Graduate Associate in the Department of Dance
13. May 24, 2001 letter from Ohio State University informing the petitioner of her receipt of a Special Projects Grant in the amount of \$316.00 for travel expenses to Chicago to work with choreographer Paula Frasz
14. 2001-2002 Certificate from Ohio State University Department of Dance stating that the petitioner won a departmental "Vickie Blaine Special Projects Award"
15. November 16, 2001 letter from Ohio State University informing the petitioner of her receipt of Program for the Enhancement of Graduate Studies' (PEGS) funding in the amount of \$200.00 to cover expenses for a dance presentation in Chicago

The above scholastic honors are presented not to established dancers with active professional careers, but rather to students pursuing further training and education. We cannot artificially restrict the petitioner's field to exclude all those dancers who have finished their educational training and who therefore do not compete for student awards and university grants. In respect to the preceding awards from educational institutions attended by the petitioner, Citizenship and Immigration Services (CIS) views academic awards as local or institutional honors rather than nationally or internationally recognized awards for the reason that they are limited to the individual school or institution presenting the awards. This criterion is intended to be restrictive and cannot be open to every arts scholar who has ever received a nominal grant or stipend from a university. Furthermore, the petitioner's awards were not presented for excellent achievement in her field, but rather for general scholastic achievements and other traits deemed praiseworthy by the university making the awards. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. The correspondence submitted by the petitioner shows that her awards amount to financial support for her then ongoing studies and dance training at Northern Illinois University and Ohio State University.

The petitioner also submitted a "Certificate of Distinction" from the [redacted] in Taiwan stating: "This certificate has been presented to [the petitioner] in recognition of their [sic] outstanding performance in the Modern Dance category on May 5, 1990. It entitles the above named to membership of the Rising Stars Dance Workshop." The petitioner states that this award is intended for "youth dancers [who] have high potential in modern dance and outstanding technique and creativities." We note that the petitioner was age 14 when she received this award. There is no evidence showing that the petitioner faced competition from throughout her entire field, rather than her approximate age group within that field. We find that the petitioner's receipt of a Rising Stars Dance Workshop award is not an indication that she has reached the "very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). 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.

In a November 2, 2004 letter accompanying the petition and in a July 13, 2005 letter submitted in response to the director's request for evidence, the petitioner claims that she won a "Third Place award at the National Chinese Dance Competition in South Region, Taiwan, 1988," a "First Place award at the National Folk Dance Competition in South Region, Taiwan, 1990," a "Second Place at the National Chinese Modern Dance Competition in South Region, Taiwan, 1992," and a "Finalist award at the National Special Dance Examination . . . in April 1990." The record, however, includes no evidence of the preceding awards claimed by the petitioner. 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)). Nor has the petitioner submitted evidence that would demonstrate the geographic area from which the individuals eligible for consideration for these awards were drawn from, the criteria for granting these awards, the level of expertise of those considered, and the number of individuals eligible to compete.

Regarding the Taiwanese awards claimed by the petitioner from 1988 to 1992, there is no evidence of contemporaneous publicity surrounding these awards or evidence showing that they command a substantial

level of recognition.¹ Section 203(b)(1)(A)(i) of the Act, however, requires “extensive documentation” of sustained national or international acclaim. Further, the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i) 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 dance awards were nationally or internationally recognized.

In light of the above, 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.

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. 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.²

The petitioner submitted articles appearing in local newspapers such as the *Salt Lake Tribune* (Salt Lake City), *Deseret Morning News* (Salt Lake City), *The Lantern* (Ohio State University’s student newspaper), *University Journal* (Southern Utah University’s student newspaper), and the *Great Falls Tribune* (Great Falls, Montana).³ There is no evidence showing that any of these publications have substantial national readership. Further, none of the published materials devote more than a few sentences to the petitioner. The majority of these articles are about ensemble productions or events in which the petitioner appeared as one of multiple performers rather than being primarily about the petitioner. The plain language of this criterion, however, requires “published materials about the alien.” If the petitioner is not the primary subject of the material, then it fails to demonstrate her individual acclaim.

In light of the above, 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.

¹ We note that large-scale competitions typically issue event programs listing the order of events and the names of the contestants. At a competition’s conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the dance competitions for which she claims to have received awards.

² 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.

³ Local media attention limited to the community where one resides is not indicative of national or international acclaim.

The petitioner submitted a May 21, 2001 letter addressed to her from Karen Bell, Chair, Department of Dance, Ohio State University, stating:

I am pleased to offer you a Summer Quarter appointment as a Graduate Associate (G.A.) in the Department of Dance.

* * *

Responsibilities of your appointment will include teaching Dance 201.02, Ballet I . . . ; teaching Dance 601.02, Ballet II/III . . . ; and fulfilling other assigned duties as needed. . . . You will be expected to work an average of 10 hours per week over the course of the quarter.

In addressing the petitioner's Graduate Associate appointment in the Department of Dance at Ohio State University, the director's decision stated: "[The petitioner's] role within the confines of graduate school appears to derive from academia rather than sustained national or international acclaim. The petitioner has not demonstrated that instructing is uncommon or atypical for staff in her capacity at the Ohio State University."

On appeal, counsel states:

The Service erred in stating that [the petitioner's] role as a graduate teacher appears to derive from academia rather than sustained national or international acclaim. [The petitioner] taught Ballet classes, Level I through Level IV, to dancer majors, as other faculty members do. To teach major level classes, one must have the ability to teach, such as a minimum of an MFA degree plus professional achievements in the field. [redacted] and [redacted], two very high standard professional dancers and educators, teach the major level classes at OSU. It is very rare and uncommon for a graduate student to teach major classes. [The petitioner] was the only graduate student to be asked to teach major level classes. She qualified for this merit not only because of her high academic achievements, but also because of her vast professional experience before joining the program. Amazingly, due to her high quality teaching, some faculty members also took her class, such as [redacted] and Associate Professor of OSU.

Furthermore, in addition to being a professional dancer, choreographer and a gifted teacher, [the petitioner] is also a certified instructor of Labanotation, with the unique ability to check and validate the notated scores that often serve as the basis for the company's repertoire. Labanotation as a system for recording and analyzing human movement was first published by Rudolf Laban in 1928. Labanotation serves the art of dance much as music notation serves the art of music. This system is one of the most universally used systems of movement notation for the documentation of, education about, and research on human movement.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. Evaluating the work of accomplished professionals as

a member on a national panel of experts is of far greater probative value than evaluating students in one's classroom. In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher, manager, coach, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim.⁴

According to [REDACTED] letter, teaching dance courses was a responsibility required of the petitioner's appointment as a Graduate Associate in the Department of Dance. We do not find that a temporary teaching appointment such as this elevates the petitioner above almost others in her field. While a teacher does evaluate the work of her pupils, this evaluation process is inherent to the position. We accept that the petitioner's appointment may distinguish her from other Ohio State University graduate students, but it is not adequate to demonstrate that she has earned acclaim beyond her employer. Further, while the petitioner possesses a certificate from the Dance Notation Bureau, Inc. stating that she "satisfactorily met the standards required" for a "Elementary Teaching Certificate in Labanotation," there is no indication that completing such training demonstrates sustained national or international acclaim. Nor is there evidence documenting the specific instances in which the petitioner used this methodology to judge others in her field at the national or international level. The plain language of this criterion, however, requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Without evidence showing that the petitioner's activities involved evaluating experienced professionals at the national or international level, we cannot conclude she meets this criterion.

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

The petitioner submitted several letters of support. We cite representative examples here

[REDACTED] Artistic Director, Bebe Miller Company, and Full Professor of Dance, Ohio State University, states:

[The petitioner's] current position as a member of Repertory Dance Theater firmly establishes her as a leading artist of our time. . . . She is an original and unique dancer and performer, with a soloist's grasp of the nuances of expression that make her stand out among other dancers. . . . She is a technical wizard of the form, with an extraordinary agility and an intuitively expressive range of movement, able to both amaze and transfix an audience.

I first met and worked with [the petitioner] when she was a graduate student at Ohio State University, where I am a Full Professor of Dance.

In her June 1, 2004 letter of support, [REDACTED] Assistant Chair, Department of Dance, Ohio State University, states:

⁴ This is true with all duties inherent to an occupation. For example, publication is inherent to scientific researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national attention, for example, by being widely cited.

I worked with [the petitioner] for three years, while she was a graduate student in our program pursuing an MFA Degree in Dance. I taught her modern dance technique, performance and repertoire.

* * *

In April 2003, RDT [Repertory Dance Theatre] presented a concert entitled *Heartland* featuring four of my works. In preparation for this concert, I worked with [the petitioner] during two rehearsal periods of three weeks each. [The petitioner] is a consummate professional who demonstrated the highest standards, in terms of work ethic, physical skill and creative imagination.

In her June 13, 2005 letter of support, [redacted] asserts that the petitioner "is one of the top three young dance artists/scholars" whom she has encountered in the past fifteen years. [redacted] further states that the petitioner has "potential to be a prominent voice in the dance field of over the next twenty years." In order to satisfy this criterion, however, the petitioner must submit evidence showing that her work has already had a significant national or international impact in her field. While the letters of support from [redacted] and [redacted] indicate that the petitioner is a talented young dancer, they do not adequately address how the petitioner's past accomplishments rise to the level of a contribution of major significance in her field.

The petitioner submitted additional letters of support from faculty members at Ohio State University, Southern Utah University, National Taiwan University, and Northern Illinois University, all of whom have worked with or taught the petitioner.⁵ The record also includes letters of support from the Artistic Director at Repertory Dance Theatre, the Mayor of Salt Lake City, the Salt Lake City Arts Council, a Constituent Liaison for U.S. Senator Robert Bennett of Utah, a member of the Board of Congress on Research in Dance (who states that she knew the petitioner during her years at Ohio State University), and the Artistic Co-Director of Ririe Woodbury Dance Company of Salt Lake City (a dance company for which the petitioner successfully auditioned). However, the preceding letters, like the letters from [redacted] and [redacted], fail to identify an original dance contribution of major significance specifically attributable to the petitioner. Further, while these letters reflect that the petitioner excelled academically at her universities and is known throughout the Salt Lake City artistic community, they are not adequate to demonstrate her national or international acclaim.

In this case, the evidence submitted by the petitioner is not adequate to demonstrate that her work has had a significant national or international impact in the modern dance field. We accept that the petitioner is a talented dancer with an impressive academic background, but the record lacks independent evidence demonstrating that her contributions have significantly influenced her field. For example, there is no evidence showing the extent of the petitioner's influence on other professional modern dancers. The fact that the petitioner has embarked on a career with a reputable dance company does not demonstrate that her prior achievements are nationally or internationally acclaimed as having major significance in the field. Without

⁵ With regard to the personal recommendation of individuals from institutions where the petitioner has studied or worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of her affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then she has not achieved national or international acclaim regardless of the expertise of her witnesses.

extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance. Thus, the petitioner has not established that she meets this criterion.

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

The petitioner submitted playbills, photographs, and promotional material from numerous performances in which she participated as an ensemble member.⁶ This particular criterion, however, is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. It is inherent to the occupation of dancer to perform on stage. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's dance performances are far more relevant the "leading or critical role" and the "commercial successes in the performing arts" criteria below. The petitioner has not established 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.

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

We accept that Repertory Dance Theatre is an organization with a distinguished reputation. In response to the director's request for evidence, the petitioner submitted a letter of support from Linda Smith, Executive Artistic Director, Repertory Dance Theatre, who states:

[The petitioner] has been a member of Repertory Dance Theatre since 2002. RDT is a company that requires their members to have a wide range of talent and to perform variety of modern dance styles and techniques. The company has very high artistic standards and employs dancers who have exemplary qualifications, outstanding training and academic education (BFA, MFA degree). The selection process for RDT dancers is very competitive. I require dancers to teach and choreograph as well as assist RDT in an allied area such as management, archiving, historic preservation or community education.

It is my opinion that [the petitioner] is uniquely qualified to fulfill RDT's artistic requirements. She is an artist with extraordinary ability. [The petitioner] has been recognized for her scholarship and her commitment to dance performance, preservation and education. She is one of the most skilled and versatile performers our company has had the pleasure to employ. In addition to her stunning performances, she brings a wealth of expertise relating to dance technology and history. [The petitioner's] training and certification in Dance Notation and multi-media curriculum development

⁶ The record reflects that many of these performances occurred in an academic setting rather than a professional setting.

makes her uniquely qualified in the field of dance research, dance preservation, dance education and archiving.

In order to meet this criterion, the petitioner must adequately distinguish herself from the other dancers of the Repertory Dance Theatre. Otherwise, the phrase “leading or critical role” is meaningless. The letter of support from [REDACTED] does not provide sufficient detail as to how the petitioner’s role was more important than that of the other cast members. The evidence reveals that the petitioner performs as part of an ensemble cast and that each member contributes equally to the dance company’s performances. There is no evidence showing, for example, that the petitioner’s contract with Repertory Dance Theatre singles her out for additional compensation based on the importance of her role within the group. In this case, the evidence submitted by the petitioner is not adequate to establish that she performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim. Thus, the petitioner has not established that she meets this criterion.

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

This criterion calls for commercial success in the form of “sales” or “receipts”; simply submitting playbills, photographs, digital video recordings, and promotional material indicating that the petitioner took part in various performances cannot meet the plain wording of the regulation. The record includes no evidence of documented “sales” or “receipts” showing that the petitioner’s performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Thus, the petitioner has not established that she meets this criterion.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner’s achievements set her significantly above almost all others in her 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.